

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION  
- - -

1 UNITED STATES OF AMERICA, : Case No. 1:20-cr-00142-1  
2 :  
3 Plaintiff, : **FINAL PRETRIAL CONFERENCE**  
4 : Wednesday, June 1, 2022  
5 - v - :  
6 : 10:00 a.m.  
7 ALEXANDER SITTENFELD, a/k/a :  
8 "P.G. Sittenfeld," :  
9 Defendant. : Cincinnati, Ohio  
- - -

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE DOUGLAS R. COLE, DISTRICT JUDGE  
- - -

11 For the Plaintiff: EMILY N. GLATFELTER, ESQ.  
12 MATTHEW C. SINGER, ESQ.  
13 MEGAN GAFFNEY PAINTER, ESQ.  
14 U.S. Department of Justice  
15 U.S. Attorney's Office  
221 E. Fourth Street, Suite 400  
Cincinnati, Ohio 45202

16 For the Defendant: CHARLES M. RITTGERS, ESQ.  
17 CHARLES H. RITTGERS, ESQ.  
18 Rittgers & Rittgers  
12 E. Warren Street  
Lebanon, Ohio 45036

19 Law Clerk: Jacob T. Denz, Esq.

20 Courtroom Deputy: Scott M. Lang

21 Court Reporter: M. Sue Lopreato, RMR, CRR  
22 Potter Stewart U.S. Courthouse  
23 Southern District of Ohio  
24 100 East Fifth Street  
25 Cincinnati, Ohio 45202  
513.564.7679

1 P R O C E E D I N G S

2 (In open court at 10:04 a.m.)

3 - - -

4 THE COURT: Good morning. We're here in open court  
5 and on the record in the matter of United States of America  
6 versus Alexander Sittenfeld, case number 1:20-cr-142.

7 We're here this morning for the final pretrial  
8 conference. Could I ask counsel to please enter their  
9 appearances for the record.

10 MR. SINGER: Good morning, Your Honor. Matt Singer,  
11 Emily Glatfelter, and Megan Gaffney Painter for the United  
12 States.

13 THE COURT: Good morning.

14 MR. C. MATTHEW RITTGERS: Good morning, Your Honor.  
15 Charlie M. Rittgers with Charlie. H. Rittgers for  
16 P.G. Sittenfeld.

17 THE COURT: Very good. And, sir, you are  
18 P.G. Sittenfeld?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: And you are represented by Charlie H.  
21 Rittgers and Charlie M. Rittgers, who are seated with you in  
22 court today?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: Very good. All right. In terms of where  
25 we're at, it's the Court's understanding we've got a six-count

1 indictment. Counts 1 and 2 are honest services wire fraud,  
2 under 18 United States Code, Sections 1343 and 1346. Counts 3  
3 and 5 are bribery concerning programs receiving federal funds,  
4 in violation of 18 United States Code,  
5 Section 666(a) (1) (B) .

6 And Counts 4 through 6 are attempted extortion under  
7 color of official right, in violation of 18, United States  
8 Code, Section 1951(a) and (b) (2) .

9 Am I correct, Mr. Singer?

10 MR. SINGER: Yes, Your Honor.

11 THE COURT: Very good. In terms of plea  
12 negotiations, have the parties completed any potential plea  
13 negotiations in this case, Mr. Singer?

14 MR. SINGER: The government has extended a plea offer  
15 in the fall of 2021. That offer was rejected by defense  
16 counsel.

17 THE COURT: Would you like to make a record of that  
18 offer?

19 MR. SINGER: Yes, Your Honor. The offer was to  
20 recommendations relating to certain guideline stipulations,  
21 and the government would cap their argument relating to a  
22 potential term of imprisonment at 24 months, leaving the  
23 defendant able to argue for a sentence of probation.

24 THE COURT: Thank you, Mr. Singer.

25 Mr. Rittgers, can you confirm that you received that

1 offer from the United States Attorney's Office?

2 MR. C. MATTHEW RITTGERS: That is accurate,  
3 Your Honor.

4 THE COURT: And have you conveyed that offer to your  
5 client?

6 MR. C. MATTHEW RITTGERS: Yes, I have.

7 THE COURT: Have you discussed that offer with your  
8 client?

9 MR. C. MATTHEW RITTGERS: Yes, Your Honor.

10 THE COURT: Mr. Sittenfeld, are you aware the  
11 government made that offer?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: Have you had an opportunity to discuss  
14 that offer with your attorney?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: Do you need any further opportunity to  
17 discuss that offer with your attorneys further?

18 THE DEFENDANT: I do not, Your Honor.

19 THE COURT: And it is your intent to reject that  
20 offer, is that right, sir?

21 THE DEFENDANT: It is, Your Honor.

22 THE COURT: Okay. Very good. All right. Where are  
23 we on discovery? Are there any outstanding discovery issues,  
24 Mr. Singer?

25 MR. SINGER: I do not believe there are any

1 outstanding discovery issues. There are some materials that  
2 we are getting from the agent.

3 For example, we took some photographs that were produced  
4 in the last discovery, not extensive by any means. There may  
5 be additional, for example, what we're considering a  
6 demonstrative photo that shows where 435 was on the map,  
7 little things like that.

8 There are particular Jencks Act statements relating  
9 to -- that we are getting from the FBI that we have not  
10 received yet, I think we discussed at our prior status, but  
11 that will be minimal in nature.

12 THE COURT: When is your plan to turn those over?

13 MR. SINGER: When we receive them from the FBI.

14 THE COURT: When do you anticipate that will be?

15 MR. SINGER: Hopefully today.

16 THE COURT: Very good. Mr. Rittgers, either  
17 Mr. Rittgers, any outstanding discovery issues you're aware  
18 of?

19 MR. C. MATTHEW RITTGERS: Nothing further than what  
20 we've briefed, Your Honor. Nothing further than what  
21 Mr. Singer has already put on the record, I believe.

22 THE COURT: Okay. Thank you, Mr. Rittgers. So in  
23 terms of outstanding motions --

24 MR. SINGER: Your Honor, if I may?

25 THE COURT: Yes, Mr. Singer.

1           MR. SINGER: I was going to address this later, but  
2 we might as well address it now since we're talking about the  
3 *Jencks* disclosure statement.

4           We received information relating to the undercover, which  
5 is the subject of a prior motion relating to a protective  
6 order, there are allegations of misconduct.

7           We discussed this on a number of calls. The FBI OPR did  
8 an internal investigation relating to the conduct. We've  
9 recently disclosed to defense counsel the results of that  
10 investigation.

11           What we did not receive from the FBI was the actual  
12 letter of sensor that was the result. We did not receive  
13 that. It's the FBI's position that these are internal  
14 FBI documents relating to their disciplinary process, and  
15 they would not provide them to our office absent a court  
16 order.

17           The government would not object to a court order with  
18 regards to the letter that is in the FBI's possession at this  
19 time. That would give the government an opportunity to review  
20 that and potentially submit it in camera to see if there are  
21 any additional equally disclosures that are appropriate as a  
22 result of that disclosure.

23           THE COURT: Thank you, Mr. Singer.  
24 Mr. Rittgers?

25           MR. C. MATTHEW RITTGERS: Your Honor, we would make a

1 motion for a court order regarding what Mr. Singer just  
2 mentioned.

3 THE COURT: Yeah. And the Court's going to order the  
4 production of that letter. If it needs to be redacted, in  
5 your view, Mr. Singer, I would propose that you submit it in  
6 camera with proposed redactions, and explanation for any  
7 proposed redactions, and then the Court will produce to the  
8 other side whatever the Court ends up determining.

9 MR. SINGER: Thank you, Your Honor.

10 THE COURT: Very good. How quickly can you get that  
11 to the Court if I get an order out today?

12 MR. SINGER: If the order's out today, I will send it  
13 to the FBI as soon as it's received and, hopefully, we'll  
14 receive it by the end of the day, if not by tomorrow.

15 THE COURT: All right. In terms of pending motions,  
16 of which there have been a number of recent filings, I just  
17 want to make sure that I've got all of this listed.

18 I think there's defendant's third motion to compel, which  
19 is Document 99. Well, I think we've discussed that  
20 previously, and I think I've said what I'm going to say on  
21 that.

22 MR. SINGER: I believe the Court ruled on that at the  
23 last status conference.

24 THE COURT: Mr. Rittgers, would you agree with that?

25 MR. C. MATTHEW RITTGERS: I would agree, Your Honor.

1           THE COURT: So I would move that one out. Well, move  
2 it beyond what I've already said about it at the last status  
3 conference.

4           There's the government's motion to preclude testimony,  
5 Document 100, with accompanying briefing. There's defendant's  
6 motion to exclude proffered 404(b) evidence, which is  
7 Doc. 111.

8           I'd like to talk about where we are on the status of  
9 briefing. On all of these, I noticed there are oppositions to  
10 some, so I'm wondering whether there's going to be replies or  
11 not, or whether they're fully briefed.

12          So let me go through the list first, and then we can go  
13 back and talk about each.

14          Government's motion in limine to preclude argument and  
15 evidence supporting jury nullification, which is Doc. 113;  
16 defendant's motion to exclude testimony of J.K., which is  
17 Doc. 115; defendant's motion to enforce the rule of  
18 completeness and Federal Rule of Evidence 106, which is  
19 Doc. 120; defendant's amended motion to enforce the rule of  
20 completeness and Federal Rule of Evidence 106, which is  
21 Doc. 121, which I believe supersedes this Document 120, is  
22 that correct, Mr. Singer?

23          MR. SINGER: That's correct, Your Honor.

24          THE COURT: All right. So I have those five motions  
25 as the motions that still require rulings. Is that the



1 complete list, Mr. Singer?

2 MR. SINGER: Yes, Your Honor.

3 THE COURT: Mr. Rittgers?

4 MR. C. MATTHEW RITTGERS: I believe so, Your Honor.

5 THE COURT: Okay. And in terms of where we're at in  
6 briefing, I believe I've received the reply on the Doc. 100 of  
7 the government's motion to preclude testimony.

8 With regard to the other ones -- well, what's your view  
9 on where we're at on briefing on defendant's motion to exclude  
10 proffered 404(b) evidence, Mr. Rittgers?

11 MR. C. MATTHEW RITTGERS: Your Honor, I believe that  
12 the government has filed a response on that motion, and we do  
13 plan to file --

14 THE COURT: I thought you filed -- have you not  
15 responded to that, Mr. Singer?

16 MR. SINGER: Your Honor, we have not yet responded to  
17 the motion to exclude the 404(b) evidence.

18 THE COURT: Okay. I thought you had as well. When  
19 are you going to have a response on that, Mr. Singer?

20 MR. SINGER: One moment, Your Honor?

21 THE COURT: Yes. It's the J.K. one, Mr. Rittgers, if  
22 that --

23 MR. SINGER: Yes, we have filed a response for J.K.  
24 We had anticipated responding to that motion next Monday,  
25 Your Honor.

1 THE COURT: Next Monday, all right.

2 If the government's opposition is in by Monday,  
3 Mr. Rittgers, when do you anticipate filing your reply?

4 MR. C. MATTHEW RITTGERS: Your Honor, are we  
5 referring to Monday, June 6?

6 THE COURT: I think that's what we're referring to,  
7 isn't that right, Mr. Singer?

8 MR. SINGER: Yes, Your Honor.

9 MR. C. MATTHEW RITTGERS: Your Honor, I believe we  
10 can file a reply by Monday, June 13th.

11 THE COURT: Any chance you can do it by Friday?

12 MR. C. MATTHEW RITTGERS: We will do our best. On  
13 the 404(b) motion, we were not put on notice for the  
14 particular subsection that the government intends to admit  
15 this evidence, so we are anxious to hear their response so we  
16 can reply. Yes, we will try to get it to you by June 11th,  
17 Your Honor.

18 THE COURT: Okay.

19 COURTROOM DEPUTY: June 10th, Judge.

20 THE COURT: The 10th.

21 MR. C. MATTHEW RITTGERS: The 10th. Sorry. Thank  
22 you.

23 THE COURT: Where are we on the government's motion  
24 in limine to preclude argument and evidence supporting jury  
25 nullification? I don't believe there's an opposition, but I

1 could be wrong.

2 MR. C. MATTHEW RITTGERS: There has not been a  
3 response, Your Honor. We will file -- we intend to file a  
4 very brief response to that.

5 THE COURT: Okay. Essentially saying you're not  
6 going to be arguing for jury nullification?

7 MR. C. MATTHEW RITTGERS: You're correct.

8 THE COURT: That's what I was hoping that was going  
9 to be. All right.

10 Defendant's motion to exclude testimony of J.K., there  
11 has been an opposition filed. When do you anticipate having a  
12 reply on that, Mr. Rittgers?

13 MR. C. MATTHEW RITTGERS: Your Honor, two attorneys  
14 have been out of the office for a while. If we could have  
15 Monday, June 13th, for that.

16 THE COURT: June 13th?

17 MR. C. MATTHEW RITTGERS: I'm sorry. June 6th. I  
18 apologize.

19 THE COURT: Yes. That would be fine. Defendant's  
20 motion to enforce the rule of completeness of Federal Rule of  
21 Evidence 106 -- well, the amended one one was filed yesterday.

22 MR. SINGER: Yes, Your Honor. I believe we could  
23 have a response to that by Monday, June 6th.

24 THE COURT: Okay. Are you intending to file a reply,  
25 Mr. Rittgers?

1 MR. C. MATTHEW RITTGERS: Yes, Your Honor.

2 THE COURT: So the one that's fully briefed, I  
3 believe, is the motion with regard to the experts; is that  
4 right?

5 MR. SINGER: Yes, Your Honor.

6 THE COURT: So I'm concerned about that,  
7 Mr. Rittgers. I'm not sure that I've got enough information  
8 about what these experts intend to testify to to perform my  
9 gatekeeper function under *Daubert* and make an assessment  
10 either about reliability or about relevance.

11 So it seems to me that there's a couple different ways we  
12 could go about it, but I'm going to want to hear about what  
13 the alleged -- what the proper opinions are going to be before  
14 we're going to put it in front of a jury.

15 So we could take a break during the trial, voir dire the  
16 expert then and make a determination. But if you'd rather  
17 have the determination in advance of trial, I would suggest we  
18 get these experts in here next week and do a *Daubert* hearing  
19 and hear what they have to say.

20 I understand that part of their opinion may be based on  
21 evidence that gets elicited at trial, so it may be a little  
22 harder to do it advance.

23 But from a planning standpoint, I can certainly  
24 understand why you would want to have some guidance from the  
25 Court coming in, so I'm going to leave it up to you about how

1 you would like to proceed. But I'm not going to make my  
2 question determinations with the jury sitting there and having  
3 to deal with objections without having some sense of where the  
4 things are going, so...

5 MR. C. MATTHEW RITTGERS: Your Honor, could we have  
6 24 hours just to think about this regarding whether or not it  
7 would be taking a break during the jury trial and bringing the  
8 expert in next week?

9 THE COURT: Sure. Yes.

10 MR. C. MATTHEW RITTGERS: Thank you.

11 THE COURT: And I can give you some broad outlines.  
12 I mean, I'm struggling a little bit on this whole campaign  
13 finance expert, what his role's going to be, why -- it's not  
14 so much a reliability concern with regard to him as it is a  
15 relevance concern.

16 I don't think your client is, as far as I understand it,  
17 is asserting through a violated campaign finance law, so I'm  
18 not sure why an explanation of campaign finance law would be  
19 relevant to any issue before the jury.

20 And before you answer that, I know that another concern  
21 that you've raised is that certain statements made in  
22 connection with the announcement of the indictment, however  
23 long ago, were in some way indicative of potential  
24 misunderstanding of campaign finance laws.

25 But the press release surrounding the indictment, and the

1 press meeting surrounding the indictment, aren't going to be  
2 issued before the jury, so I don't see any point in trying to  
3 correct any potential misstatements that may have occurred  
4 during that press hearing.

5 So I'm just really struggling. If the answer is, well,  
6 if the government's going to try to make something out of the  
7 fact that these contributions went to a leadership PAC rather  
8 than to a campaign fund, and they're going to try and suggest  
9 there was something untoward about that, and the inference  
10 should then thus be that your client had a guilty mens rea  
11 because he was trying to hide it by chipping at funds to here  
12 rather than there, and you want to come in and explain why  
13 there's nothing untoward about the way in which that was done,  
14 I guess I understand that.

15 But I don't have any reason, as I sit here now, to  
16 anticipate that the government's going to be trying to create  
17 an inference with the jury surrounding the way in which the  
18 campaign funds were received.

19 So that's sort of the nature of my confusion around that.  
20 Does that make sense, Mr. Rittgers?

21 MR. C. MATTHEW RITTGERS: It does, Your Honor. Do  
22 you want me to respond, or --

23 THE COURT: I would love to hear a response to that.

24 MR. C. MATTHEW RITTGERS: We anticipate that the  
25 government will show video and introduce wire audio recordings

1 where they are -- where they're portraying Mr. Sittenfeld  
2 personally accepting a check from the undercover agents.

3 They will show audio and video where Mr. Sittenfeld says,  
4 well, this is a PAC that nobody really knows about. The press  
5 isn't getting in and looking at the donations. This is a PAC  
6 that my name's not associated with on FEC filings.

7 The government will elicit testimony into evidence  
8 indicating that Mr. Sittenfeld talked about specific or  
9 general policy positions at the same time that a discussion  
10 about fundraising was occurring.

11 They're going to elicit testimony and evidence about  
12 bundling, where an individual goes out to his or her network  
13 and gets a bunch of checks for an elected official or  
14 candidate, and says I fundraised \$10,000 for you. That's  
15 their whole predication in this particular case in making  
16 Mr. Sittenfeld a target.

17 They're going to elicit -- I've got a list of 10 to  
18 20 things similar to what I've just told Your Honor, and they  
19 won't need to expressly say to the jury that that is illegal  
20 or unethical.

21 Well, by the mere fact that they are introducing those  
22 things that a layperson might think is nefarious, especially  
23 with the atmosphere that they created in this undercover sting  
24 operation, I think that -- I mean, in one of the most recent  
25 filings, they said that they have, I believe, implied that

1 they're going to bring in evidence that Mr. Sittenfeld didn't  
2 accurately report a gift, a baby gift, that he had received  
3 from the undercover agent. That's an FEC violation.

4 MR. C. HENRY RITTGERS: It's not.

5 MR. C. MATTHEW RITTGERS: It is not an FEC violation.  
6 My dad is correct. It's even confusing for me at times,  
7 Your Honor.

8 I believe that -- and this is a non-express- -- I know  
9 I'm not saying anything you don't know, Your Honor, this is a  
10 non-express allegation without a plus factor.

11 And the government is attempting to have a group of  
12 lay people determine a man's intent by showing them  
13 atmospherics, and then preventing us from telling the  
14 12 people, who have no idea how campaign finance works, that  
15 all the things that occur are actually legal and ethical.

16 And it does not go directly to whether or not a bribe --  
17 that there was a meeting of the minds under contract law, but  
18 that in order to determine a man's intent, they are -- a jury  
19 is going to look at all of the context surrounding this and  
20 have a lot of questions about are you permitted to personally  
21 solicit someone for a campaign donation or a PAC donation on a  
22 leadership PAC? Are you permitted to put your name on an FEC  
23 filing? Are you permitted to control that PAC?

24 And I think most people will think, because we hear about  
25 dark money PACs, they're going to think, well, he screwed up.



1 He should not have done that and, therefore, we will then  
2 imply later that if he's dirty there, untoward, or unethical  
3 there, then he must be unethical, and he must have really  
4 agreed to a bribe on this non-express case.

5 THE COURT: But that would get into my other concern  
6 about that testimony, which is -- start with the last part of  
7 what you just said, which is you would like this expert to  
8 instruct the jury with regard to the law of campaign finance.

9 I guess my concern on that front is, you know, generally  
10 in trial there's one person who fills the role of informing  
11 the jury of what the relevance was, and that's usually a  
12 judge, it's not an expert witness.

13 And you just suggested that you intend to elicit a lot of  
14 testimony about what is or is not allowed by FEC law and regs.  
15 I mean, isn't that something that should be addressed by the  
16 judge rather than by an expert witness?

17 MR. C. MATTHEW RITTGERS: If Your Honor could give  
18 them the instructions, preliminary and final instructions,  
19 indicating that some of the things that I just mentioned, we  
20 have a list of 10 to 20, are all permissible.

21 The issue -- and I probably misspoke slightly. There's  
22 not a specific FEC regulation or ethics law that will say  
23 he -- Mr. Burns is not planning to testify to a specific law  
24 because the law is, but the law doesn't expressly say that a  
25 candidate can virtually solicit a campaign check. There's

1 nothing in the law that expressly says that.

2 There's a body of regulation that precludes candidates  
3 from doing certain things, and where there are omissions, it  
4 is practice and the standard that it is permissible.

5 And Mr. Burns is a --

6 THE COURT: That's right. Now you've gotten into the  
7 other area where I'm concerned, which is -- I mean, imagine if  
8 your client were -- the government was prosecuting your client  
9 for speeding from Cincinnati to Dayton on 75, right?

10 And you wanted to bring in an expert. And your expert  
11 was a highway patrol officer, says I patrolled that highway  
12 for 20 years, and I'll tell you anything less than five miles  
13 an hour over, they just don't pull people over. And your  
14 client was going two miles an hour over and says, that's  
15 exactly my point, right?

16 That doesn't -- I'm not sure that an expert could testify  
17 as to custom and practice, or if you brought in -- you know,  
18 if that same patrol officer said, yeah, I spent days and days  
19 and days out there. I'll tell you every day, 98 percent of  
20 the people who come by are going five miles an hour over. So  
21 what?

22 I mean, that doesn't change whether or not your client  
23 was speeding, right? I mean, it may give you a basis for a  
24 selective prosecution claim, but that's not a claim for the  
25 jury.

1           So I'm just trying to figure out the custom and practice  
2 part, and how you intend to elicit relevant evidence with  
3 regard to custom and practice, because if it isn't clearly  
4 legal, right, the fact that a whole bunch of people are doing  
5 it doesn't necessarily change the legality.

6           MR. C. MATTHEW RITTGERS: But, Your Honor, based on  
7 ethics opinions, United States Supreme Court opinions, it is  
8 legal. There's just not a particular law in the FEC  
9 guidelines where Mr. Burns is going to say here's the  
10 subsection that indicates you can personally solicit campaign  
11 funds.

12           THE COURT: Okay. So he's going to, sort of -- I  
13 think I'm back to my original trauma, where he's going to read  
14 a bunch of court opinions, and synthesize them, and say my  
15 understanding of the law as an expert in this field is that  
16 the law allows A, B, and C. But then I get back to my concern  
17 about that should be the judge, not an expert witness. You  
18 see, I'm kind of stuck between these things.

19           MR. C. MATTHEW RITTGERS: I understand. This case,  
20 or most of the reported cases here, or all of the reported  
21 cases that we're aware of, there are express agreements.

22           And so therefore, when you have an express agreement,  
23 there's not this concern that a juror is going to draw an  
24 incorrect inference from something related to campaign  
25 finance.

1 But this case is all about context. And I don't know how  
2 else the jury is going to understand the context from things  
3 that we started talking about without somebody -- and whether  
4 it's you, Your Honor, or an expert instructing them that  
5 there's nothing that prohibits a candidate from personally  
6 accepting a check, there's nothing that prohibits a candidate  
7 from operating, in fact, he has to.

8 That is one area of law that is clear in the FEC. He has  
9 to control it. It's his leadership PAC and -- while at the  
10 same time he can't put his name on it. And these jurors are  
11 going to have questions as to whether or not it was operated  
12 properly.

13 THE COURT: Well, let me ask it this way, and maybe  
14 this brings Mr. Singer into the conversation.

15 Are the legal points that Mr. Rittgers is concerned  
16 about, are they undisputed? I mean, do you agree with, for  
17 example, the leadership PAC can't have Mr. Sittenfeld's name  
18 on it, and yet the leadership PAC needs to be controlled by  
19 Mr. Sittenfeld, and there's nothing improper about  
20 Mr. Sittenfeld accepting checks that are to be directed  
21 towards the leadership PAC? Are those all propositions to  
22 which the government agrees?

23 MR. SINGER: Your Honor, I can't sit here and say  
24 that I'm versed on the intricacies of FEC law. It's not  
25 relevant to what the jury is going to be instructed to do

1 here.

2 The issue is, so is there some regulation that discusses  
3 whether or not someone can have their name on the PAC and  
4 still control it? I don't know. Sitting here, I don't know.  
5 And I don't know how that's relevant either.

6 What's relevant is, in recorded statements that will be  
7 put before the jury, the defendant said, "This is my PAC. It  
8 benefits me."

9 THE COURT: I don't think Mr. Rittgers is disputing  
10 that the payment of the money to the PAC, that Mr. Sittenfeld  
11 would have understood that to be a benefit. Am I wrong,  
12 Mr. Rittgers?

13 MR. C. MATTHEW RITTGERS: You're correct, Your Honor.

14 THE COURT: So they're not disputing that. Their  
15 concern is that the government is going to portray this as  
16 some kind of slight of hand in the way that the money was  
17 funneled, and even just using the word "funneled" has some  
18 connotation associated with it.

19 But that either directly or indirectly, you're going to  
20 rely on something about the structuring to create an  
21 implication of guilt that's not actually supported by the  
22 fact, if people understand campaign finance law, which I  
23 certainly agree, you know, the jury and lay juries are  
24 unlikely to. And, in fact, I would be the first to admit that  
25 I don't know the intricacies of campaign financing laws, as I

1 sit here today.

2 So I understand the concern that Mr. Rittgers is raising,  
3 that it would be inappropriate for the jury to draw some  
4 inference of mal-intent from what appears to be, in some way,  
5 shady structuring when, in fact, it isn't shady structuring.

6 And I don't think it's fair to Mr. Sittenfeld to have the  
7 jury be in a situation of sitting there thinking, oh, I've  
8 heard about PACs, so PACs are bad things, ergo, this was a bad  
9 thing, right? I mean, the government doesn't believe that's  
10 fair either, I don't think.

11 MR. SINGER: The government is not going to present  
12 that evidence or argument. But the intent is going to be  
13 based on recordings, the defendant's statements in the  
14 recordings, the context that's created through those  
15 recordings.

16 THE COURT: I completely understand, Mr. Singer, but  
17 I do take Mr. Rittgers' point that somehow, either through the  
18 Court or through somebody who can testify as to the ins and  
19 outs of campaign finance law, if these things are, in fact,  
20 entirely appropriate and legal, I agree the word "PAC" in  
21 today's environment has some connotations associated with it.

22 And I don't think it's appropriate for those connotations  
23 to go un-commented upon by anybody, and then potentially  
24 create a false implication of guilty mens rea based on  
25 somebody's belief that, oh, PACs are inherently bad and this

1 must have been illegal. I mean --

2 MR. SINGER: Your Honor, I think that the  
3 government's proposed jury instruction say that, that the  
4 defendant is allowed to receive, under the First Amendment,  
5 PAC checks and campaign contributions. That's permissible.  
6 That's in our proposed jury instructions. What the defendant  
7 is not allowed to do is accept it in exchange --

8 THE COURT: Quid pro quo.

9 MR. SINGER: Quid pro quo. And that's the law. And  
10 we have stipulated that that is an instruction that will be  
11 appropriate for the jury, but the intricacies, the ins and  
12 outs of regulations surrounding campaign finance law and  
13 FEC law is a sideshow.

14 THE COURT: I understand that, but I do think --  
15 here's what I would suggest that the parties attempt to do.

16 If the parties can come up with some agreed preliminary  
17 instruction that the Court can give the jury about the  
18 appropriateness of having the leadership PAC, the  
19 appropriateness of not having the defendant's name associated  
20 with that PAC, the appropriateness of receiving checks, all  
21 those things that Mr. Rittgers, I think is, in my view,  
22 appropriately concerned about.

23 If we can have preliminary instructions to the jury so  
24 that -- my other fear is they hear all this evidence, they  
25 start forming opinions, and they get to the end of the trial,

1 and then they get these jury instructions that say, oh,  
2 everything that you might think about PACs or have thought  
3 about PACs in real life, it turns out isn't the problem here.  
4 That may be too late.

5 So I'm either going to allow -- somebody is going to give  
6 the jury some insight about whether or not this is -- whether  
7 there's anything inappropriate about the structuring here.

8 And I completely get your point, Mr. Singer, and the  
9 argument the government's going to make about the quid pro  
10 quo.

11 And I agree with you, but I just don't want a jury  
12 thinking there's something off about this structuring if, in  
13 fact, everybody at both those tables agrees that there isn't  
14 anything illegal or illicit or unethical about this  
15 structuring here. Does that make sense?

16 MR. SINGER: Yes, Your Honor.

17 THE COURT: And if the parties can come up with  
18 agreed preliminary instructions, I'd be glad to give them,  
19 otherwise, I'm going to be sort of inclined to allow at least  
20 some testimony around that topic.

21 Now, I'm not inclined to allow testimony around the  
22 topics of things like, for example, somebody coming in and  
23 saying, oh, I've worked with campaigns for 20 years, or I've  
24 worked with politicians for 20 years, and this is typical of  
25 the way they interact with donors.



1           We're not doing that because that's, A, in my view,  
2           unreliable, unless you can tie it to something more; and, B,  
3           it's getting awfully close to instructing a jury on intent,  
4           which isn't permissible under 704, so there's limits here.

5           I mean, we're not going to have somebody come in and sort  
6           of wave the magic wand of expert and bless everything that  
7           went on. But if there are things that are clearly legal, that  
8           may have, in the jury's -- a lay jury's mind, implications  
9           that deal with the outing, I don't want that shadowing  
10          deliberations in this case, okay? Does that make sense?

11          MR. SINGER: Understood.

12          THE COURT: All right. Now, I'm also, even though  
13          it's not fully briefed, in the interest of trying to move this  
14          along a little bit, I want to talk a little bit about the  
15          motion to enforce the rule of completeness.

16          And I think what we need to do on that -- and I'm  
17          certainly willing to hear the government's response on this  
18          motion. But I'm a little concerned about the motion up front,  
19          so I might as well just lay out my concerns, and then we can  
20          talk about what we're going to do.

21          The rule of completeness -- and I don't even know where  
22          the government pointed this out. It might have been in the  
23          objections to the jury instructions. But the rule of  
24          completeness doesn't make inadmissible hearsay admissible.

25          I mean, there's about 10 million Sixth Circuit cases that

1 say that, some of which even say, even though this seems  
2 unfair, this is the rule. But that being said, not every  
3 out-of-court statement is hearsay.

4 And my concern here is that some of the out-of-court  
5 statements that Mr. Sittenfeld may or may not have made in the  
6 parts of the recordings that the government doesn't intend to  
7 play, you know, aren't hearsay. They may be for the impact on  
8 the listener, for example, and so I can give an easy example.

9 If Mr. Sittenfeld -- and I want to be clear to everyone  
10 in the courtroom. I have no reason to believe these are the  
11 facts of this case. This is a hypothetical.

12 But if Mr. Sittenfeld were sitting at a table and said,  
13 look, I can't do anything -- I can't make any promises. I  
14 can't do anything that would violate campaign law. I want to  
15 be very clear. For example, I can't sit here today and say if  
16 you give me this amount of money, I'm going to get these  
17 votes. I can't do that.

18 And then the government wants to come in and clip the  
19 beginning and the end, just put the part on that says if you  
20 give me the money, I'll get the votes, that would be  
21 completely contrary to the actual intent of the conversation.

22 And so if the question is what was the impact of that  
23 intermediate part on the listener, you can't know without  
24 having that entire exchange.

25 So that wouldn't be a hearsay statement, nor would it be

1 exculpatory. It would be for the impact on the listener of  
2 the entire context of the communication.

3 And I think, under the rule of completeness, that would  
4 be allowable because it's not bringing in an exculpatory  
5 statement, it's just providing context for the part that was  
6 played.

7 Now, having said that, Mr. Rittgers, I am not of the view  
8 that in a multi-month investigation, that the rule is going to  
9 be if the government wants to use two minutes of audio, that  
10 means that 20 hours of audio need to be played.

11 So if there are specific additional parts that you  
12 believe, Mr. Rittgers, are not hearsay, and are needed to put  
13 something that the government intends to play in context for,  
14 for example, the impact on a listener, I'm willing to  
15 entertain that.

16 But there's no way I'm going to say that there's a rule  
17 that if the government, in a criminal prosecution, uses some  
18 small portion of audio or video recordings, that means that  
19 under some notion of completeness, the entirety of them needs  
20 to be played. You're going to need to tie it to specific  
21 parts that you think need to be placed in context.

22 And I want to also be very clear that there's a whole  
23 bunch of Sixth Circuit case law that I started with, that if  
24 you're intending to use the additional parts for the truth of  
25 the matter asserted, that's not allowable.

1           So, for example, I think one of the Sixth Circuit cases  
2 involves somebody who says something about, yeah, that was my  
3 gun that was used in the murder. And then at some other point  
4 during the interview with police officers said, but I sold it  
5 three months before the crime happened, you don't get to bring  
6 in the "but I sold it three months before it happened" part  
7 because that's an attempt to bring in hearsay. There you're  
8 using it for the truth of the matter asserted.

9           So my only point is all of this stuff is very contextual  
10 and very much specific to the nature of the additional parts  
11 that you want to bring in.

12           If it's an exculpatory hearsay statement, it's not coming  
13 in. But if it's being offered, as I said, for impact on the  
14 listener as some other permissible use, that's an exception to  
15 the hearsay rule generally, I'll at least hear what you have  
16 to say on that.

17           Do you understand what I'm saying, Mr. Rittgers?

18           MR. C. MATTHEW RITTGERS: I do, Your Honor. The only  
19 thing that I can think of that would be an express exculpatory  
20 statement is in like a three-minute call that they'd have to  
21 clip out the middle of, so I don't think we have that concern.

22           THE COURT: Okay. Well, and I don't know that you  
23 guys are going to get to an agreement on this, I'm not  
24 suggesting that. But I'm not going to have the jury listen to  
25 20 hours of unstructured audio recordings of a whole bunch of

1 separate meetings. I'm not doing that, so...

2 But I understand your concern, and I'm willing to try and  
3 work with you if there are specific things, like the example  
4 that I just gave.

5 And maybe the parties can work together and see if  
6 there's -- in light of what I just said, if there's some kind  
7 of agreement they can come to on that.

8 And I also want to be clear, this isn't -- A, no rulings  
9 on motions in limine are final, and my preliminary rulings, we  
10 have to wait and see what happens at trial. But, B, this is  
11 just based on what I've gotten looking at your motion and the  
12 concerns I have about it, and without the benefit of the  
13 government's response.

14 Although, I think -- is it in the objection to the --  
15 someone from the government laid out Sixth Circuit case law  
16 that the rule of completeness does not trump the hearsay rule.  
17 I can't remember where that was, or maybe you didn't. Maybe I  
18 just found that on my own.

19 MR. SINGER: Your Honor?

20 THE COURT: Yes. Go ahead.

21 MR. SINGER: I didn't mean to interrupt, if you were  
22 done?

23 THE COURT: No. You're good.

24 MR. SINGER: I was going to address the rule of  
25 completeness motion.

1 THE COURT: Yes.

2 MR. SINGER: I think the government would agree with  
3 everything that you said. That leaves us in the position of  
4 should we respond to the motion as it's filed, or are you  
5 seeking more from the defense, and then --

6 THE COURT: No.

7 MR. SINGER: -- we would respond to that?

8 THE COURT: If you're comfortable with what I just --  
9 that's my ruling, based on their motion without the benefit of  
10 your response. So I doubt your response would make it worse  
11 for you. I can't really imagine how that could be.

12 So if you're comfortable with that, that's what I meant,  
13 you don't need to respond.

14 MR. SINGER: Okay.

15 THE COURT: Now, I guess if Mr. Rittgers has heard  
16 something that I've said that he wants to reply to, I think he  
17 could. If you're not going to file a response, I don't mean  
18 to, you know, prevent him from putting in further  
19 argumentation in response to what I just said, but you don't  
20 need to respond if you're comfortable with what I just said.

21 MR. SINGER: We will assess whether or not a response  
22 is appropriate, based on the Court's comments.

23 THE COURT: Very good.

24 MR. C. MATTHEW RITTGERS: Your Honor, my father had a  
25 question.

1 THE COURT: Yes.

2 MR. C. MATTHEW RITTGERS: Based on what you  
3 indicated --

4 THE COURT: And you can both -- feel free,  
5 Mr. Rittgers, Senior.

6 MR. C. HENRY RITTGERS: Thank you, Your Honor. With  
7 regard to being a little more explicit as to those portions  
8 that should be played in order to give them context, do you  
9 want those now ahead of trial so that you can see what we are  
10 worried about and what we would want played?

11 THE COURT: I think it would be helpful to the  
12 progress of the trial. Are there transcripts of all these  
13 things?

14 MR. C. MATTHEW RITTGERS: No, Your Honor. There are  
15 a number of FBI transcripts that are official, but not all  
16 recordings are transcribed.

17 THE COURT: And nobody has made even informal  
18 transcriptions of them?

19 MR. C. MATTHEW RITTGERS: We have them informal, yes,  
20 Your Honor.

21 THE COURT: But you don't want to share that with the  
22 government?

23 MR. C. MATTHEW RITTGERS: Well, I mean, they're truly  
24 informal. They're like an email, listening and typing. It's  
25 not even with a court reporter, Your Honor. I'm fine sharing

1 it. It's what the audio says.

2 THE COURT: I mean, to the extent we all understand  
3 they're not official transcripts, it may be easier for me to  
4 review if I had, like, in yellow is the part the government  
5 wants to play, and in green is the part we propose adding, or  
6 something like that. Even if it's in an unofficial  
7 transcript, it would be a lot easier than sitting and  
8 listening to audiotapes would be my only thing.

9 MR. SINGER: Your Honor, if I may?

10 THE COURT: Yes.

11 MR. SINGER: We have reached out to a court reporting  
12 service, and -- after hearing that the defendant had intended  
13 to put in a lot of statements outside of what we consider to  
14 be super relevant statements that we had already transcribed.

15 So we have a number of additional transcriptions that we  
16 are finalizing. They're informal as of now, but we are going  
17 to be, obviously, providing them to defense counsel, and that  
18 might help move this process along, having those transcripts  
19 available.

20 THE COURT: Mr. Rittgers?

21 MR. C. MATTHEW RITTGERS: That would be wonderful,  
22 Your Honor.

23 THE COURT: All right. So if the parties can submit  
24 in advance of trial, you know, Mr. Rittgers, what he's  
25 proposed adding.



1           And I understand that we may not be at a hundred percent  
2           on knowing for sure what the government's putting on in its  
3           case in chief, so I'm not suggesting this would necessarily be  
4           bulletproof, but at least it will give me a chance to look at  
5           it in advance of trial.

6           Anything we can do in advance of trial, I think, will  
7           benefit all of the parties, in terms of keeping this trial  
8           moving along in as seamless a fashion as it can. So that is  
9           where I was on that one.

10          It sounds like, Mr. Rittgers, I could make you the same  
11          offer with regard to setting a time limit with regard to  
12          opposition, so let me tell you where I'm at on jury  
13          nullification that I'm not going to allow.

14          I'm certainly not going to have an instruction on jury  
15          nullification, and I don't intend to allow the parties to  
16          argue for hearing nullification.

17                 MR. C. MATTHEW RITTGERS: We might not file a  
18                 response, Your Honor.

19                 THE COURT: Okay.

20                 MR. C. MATTHEW RITTGERS: I mean, we weren't planning  
21                 on arguing the response.

22                 THE COURT: Okay. So my preliminary ruling is I  
23                 would grant -- but, yes, go ahead.

24                 MS. GLATFELTER: Your Honor, I have concern because  
25                 some of the arguments that are in the government's motion to

1 prevent jury nullification are echoed throughout separate  
2 motions.

3 So while defendants somehow profess they're not intending  
4 to elicit argument about these things, as an example, one of  
5 our topics in the motion was it's not a defense that everyone  
6 else was doing it or this is just how things work. We've  
7 heard that today. We've heard that in the expert response.  
8 So I would ask for a ruling on it.

9 THE COURT: Okay. I am happy to rule on it because I  
10 agree, "this is the way it works" is not a defense to this  
11 charge.

12 I thought I understood Mr. Rittgers to be acquiescing in  
13 that, but maybe I misunderstood.

14 MR. C. MATTHEW RITTGERS: Your Honor, absolutely  
15 agree. But definitely in terms of Mr. Burns, just to put  
16 another wrinkle in while we're all here.

17 The J.K. motion, as an example, just so that we can put  
18 that before the Court. If they put someone like J.K. on to  
19 talk about, well, this is what -- well, this individual works  
20 for collectivists all over, advice being relied on, on  
21 cross-examination, I don't know what the government thinks to  
22 elicit as testimony, but it could open the door for that.

23 THE COURT: I would agree with that. You know, in  
24 terms of J.K. -- defendant's motion to exclude -- which is the  
25 one that talks about the other people, is that the 404(b) one

1 or is that the J.K. one?

2 MR. C. MATTHEW RITTGERS: Other people in terms of?

3 THE COURT: The other, what's being called character  
4 evidence. That was, I think, the 404(b) motion, right?

5 MR. C. MATTHEW RITTGERS: Probably, yes.

6 THE COURT: Yeah. I don't want to get ahead of  
7 myself on too much of this stuff, although I will say with  
8 regard to the 404(b) stuff, you know, we're not going to trot  
9 a bunch of witnesses up to say things like, I don't know, he  
10 didn't really say anything, but I sort of felt, I was getting  
11 this sense that... you know, we're not doing that.

12 If there's other examples of similar conduct to what's  
13 alleged in this case involving specific official acts and  
14 campaign contributions tied to those specific official acts,  
15 that's one thing, but we're not putting people on the stand to  
16 say they subjectively felt like, I don't know, it was just in  
17 the air. We're not doing that. That's not fair.

18 So when I went through some of the examples in the  
19 404(b), some of them certainly seem to fall, at least in my  
20 view, based on the description that was provided within the  
21 latter category of, I don't know, it was just kind of an  
22 atmospheric, or something along those lines, you know, that  
23 isn't going to fly.

24 But that's just kind generally where I'm at. And I will  
25 give written rulings on those things, but I'm just trying to

1 give you as much heads up as I can on how to prepare for  
2 trial.

3 The government, you know, J.K., or with regard to -- I do  
4 agree that on the 404(b), that to the extent that it's all  
5 part of the same general alleged series of events, it's not  
6 even technically 404(b) because it's not other acts. It's  
7 part of the same scheme or plan or -- alleged. I want to be  
8 very clear, alleged scheme or plan.

9 So if it's all within connection with the same general  
10 time frame, the same campaign, the same whatever, you know, I  
11 don't think that's 404(b). I think that's unindicted conduct.

12 I think the question's going to be asked about why it's  
13 unindicted, but -- separate issue, but it's unindicted conduct  
14 involving the same general plan or scheme, and so I would not  
15 call that 404(b), just so we're clear.

16 Mr. Rittgers, am I drawing lines that you're following?  
17 I'm not asking whether you agree with them, but am I drawing  
18 lines you're following?

19 MR. C. MATTHEW RITTGERS: Yes, Your Honor, I'm  
20 following. It goes back to Mr. Burns. In one of the recent  
21 filings, which was on Monday or Tuesday of this week, the  
22 government mentioned the term that you just said, which was  
23 unindicted criminal conduct for soliciting campaign donations  
24 from someone that does business in front of the city. It's  
25 not even an ethical violation, so why would it be criminal

1       conduct.

2           And so the same confusion that, I believe, the government  
3       might have, the jurors are going to have that same confusion,  
4       without understanding that a person is permitted -- a  
5       candidate or an elected official is permitted to throw a  
6       fundraiser with a group of industry leaders or lobbyists two  
7       days before a vote and change their vote.

8           And so if the government is saying that this is uncharged  
9       criminal conduct, that being an elected official in the City  
10      of Cincinnati, they use the word "targeting." Someone who  
11      might have business in front of the city, it's not criminal  
12      conduct, or an --

13           THE COURT: I agree. I think, as I've said from the  
14      outset of this case, the difficulty is that candidates raise  
15      money from people who may have subsequent business in front of  
16      the office to which the candidate is seeking to be elected,  
17      and there is nothing wrong or unethical about that.

18           It only becomes wrong or unethical if there's an  
19      agreement, either expressly written down or tacitly arranged  
20      through the phrase that, I think, Judge Easterbrook used was  
21      "winks and nods," that there is an agreement in place that the  
22      official will undertake some specific official action in  
23      exchange for that campaign contribution.

24           And so the difficult task the jury is going to face in  
25      this case is trying to assess whether this is just someone who

1 gave money in hopes that someone would get elected to office  
2 and, generally, looked favorably upon that person, or if this  
3 is someone who gave money in exchange for your client tacitly  
4 agreeing to take some specific act.

5 And so I certainly do not intend to allow anyone to  
6 suggest to the jury that the mere fact of taking or  
7 accepting -- I shouldn't say taking, accepting a campaign  
8 contribution from someone who has or may have business with  
9 the office to which the candidate is seeking to be elected is,  
10 in and of itself, in any way unethical, so does that --

11 MR. C. MATTHEW RITTGERS: Yes, Your Honor.

12 THE COURT: And I recognize that can come up in a  
13 variety of different ways, and so, you know, I'm going to be  
14 trying to police that line.

15 And you guys are going to need to help me try to police  
16 that line, because I may not be as attuned to the various  
17 different ways in which that can come up. But that is a line  
18 I very much intend to police, because that's kind of the  
19 difficult task we face in this case.

20 MR. C. MATTHEW RITTGERS: Understood.

21 THE COURT: All right. So that's generally where I  
22 am on these motions, some of which are not fully briefed. And  
23 I'm certainly not saying I'm set in stone on anything, other  
24 than it sounds like we're generally -- if I could, it sounds  
25 to me like we're generally in agreement on the jury

1 nullification thing, except you said you wanted a ruling,  
2 because there's a lot of talk that there's some specific  
3 things in there.

4 The rule of completeness thing, as I understand it, you  
5 guys are going to try to take a crack at figuring out what you  
6 want to add, and at least put it in front of me before this  
7 trial, and I'll make a ruling on that.

8 The government's motion to preclude expert testimony,  
9 you're going to get back to me within 24 hours about whether  
10 you want to do a *Daubert* hearing next week, or some kind of  
11 voir dire during trial.

12 The 404(b) thing, I sort of gave you some preliminary  
13 thoughts, but I'm happy to write something up if that's  
14 better. And the J.K. thing, have I shared my preliminary  
15 thoughts on J.K. or not?

16 MR. C. MATTHEW RITTGERS: I believe tacitly but not  
17 expressly.

18 THE COURT: Well, I think that's a theme for this  
19 trial is tacitly not expressly. But yeah, it's sort of where  
20 I am on the 404(b) thing.

21 I don't think there's anything wrong with targeting  
22 people who may be inclined to contribute, for various reasons,  
23 to campaign contributions; but, you know, I really don't know  
24 what the person's going to say, so it's very hard for me to  
25 rule in the abstract if --

1           You know, if somebody were to come in and say -- and,  
2           again, for the benefit of everyone in the room, this is not  
3           what the evidence says, or at least any evidence I've seen.

4           But if J.K. were to come in and say, oh, yeah, you know,  
5           Mr. Sittenfeld told me to go out and propose these deals to  
6           people, we'll do X in exchange for Y, that's different from  
7           here are people who may be interested in your campaign because  
8           they are people who have business before the city.

9           And I don't think there's, as far as I know, anything  
10          wrong with the latter, but the former would be a violation of  
11          the law, so...

12          It's a little hard in the abstract to say exactly what  
13          J.K. is going to say, but if, to the extent the government  
14          intends to try to create, sort of, the appearance of  
15          misconduct based on the fact that a candidate may think, oh,  
16          well, a potentially rich target pool is people who may have  
17          business before the city and, therefore, we will take steps to  
18          allow you to address any such implications, because I don't  
19          think that implication is fair to your client.

20                 MR. C. MATTHEW RITTGERS: Thank you, Your Honor.

21                 Your Honor, I might have misspoke, and I apologize  
22                 for going back to what Ms. Glatfelter had spoken about with  
23                 ruling on the nullification motion.

24                 THE COURT: Yes.

25                 MR. C. MATTHEW RITTGERS: I think I indicated to the



1 Court that we are in agreement with all that.

2 Mr. Sittenfeld just reminded me there might have been a  
3 part of that brief that indicated that Mr. Sittenfeld's public  
4 pro-development stance was inadmissible, and I might be  
5 quoting that incorrectly.

6 But there was -- in one of the motions, there was a Sixth  
7 Circuit pattern jury instruction that indicates that it's not  
8 a defense to bribery, that he would have done it without the  
9 money.

10 THE COURT: That is correct.

11 MR. C. MATTHEW RITTGERS: I agree with that  
12 statement. However, on a non-express case, for a jury to have  
13 to come to the determination as to why an elected official  
14 might want to champion a project, they have to understand the  
15 context and other reasons why that elected official would say,  
16 you know what, I'll help you because this project is something  
17 that I believe in.

18 And so if, to the extent -- and I might be incorrect, but  
19 to the extent in that nullification motion there's some  
20 argument or request that we are not permitted to show  
21 Mr. Sittenfeld's public pro-development stance, then we would  
22 not agree to that one part, Your Honor.

23 THE COURT: Yeah. Is that in the jury nullification  
24 motion? There's been such a flurry of filings, I'm not  
25 completely up to speed on all of them, but...

1           MR. SINGER: In the trial brief, Your Honor, we said  
2           that would be admissible as evidence. It just cannot be  
3           argued as a defense. I think that was our position.

4           THE COURT: Right. And I think I heard Mr. Rittgers  
5           agree with that.

6           Well, since we're kind of powering through some issues,  
7           one other issue that came up -- we'll talk about how we're  
8           going to do the jury instructions, but one other issue that  
9           came up that I want to give my preliminary thoughts on,  
10          because I think it may impact the way in which you prepare for  
11          trial, is in regard to this good faith defense.

12          As far as I can tell, and I'm willing to hear more  
13          argument on it, there's not a freestanding good faith defense  
14          in the sense of, oh, my client's basically a good guy, or my  
15          client basically is pro-public, or my client has got  
16          Cincinnati's best interest at heart. If that's what you mean  
17          by good faith, as far as I know, there isn't such a defense.

18          The way good faith comes up, and why the Sixth Circuit  
19          has said it's not consistent with an intent to defraud, is  
20          because of this type of hypothetical, where somebody -- I come  
21          to you and I say, hey, I'd like you to invest with me. I've  
22          got this great idea. I'm a hundred percent sure we're going  
23          to get 20 percent return per year, right?

24          And if it turns out that I actually believe that, then  
25          I'm not trying to defraud you because I don't have an intent

1 to defraud. I could be wildly wrong, but if I have a  
2 subjective honest belief that we're going to generate  
3 20 percent returns, and I tell you that, that isn't consistent  
4 with an intent to defraud.

5 But here -- so good faith is usually tied to some  
6 specific statement, and whether that statement was said or  
7 uttered in good faith. And the Sixth Circuit said if it was  
8 uttered in good faith, that's not consistent with an attempt  
9 to defraud.

10 But that doesn't mean there's a freestanding good faith,  
11 like I wake up with an optimistic view of Cincinnati's going  
12 to be a great city, and so as long as I'm just pursuing that,  
13 that means however I go about it, it doesn't violate any law.

14 So there isn't going to be -- and what I need you to  
15 explain to me, in the context of this case, if you're seeking  
16 a good faith instruction -- I think it's 10.04 or something,  
17 but if you're seeking that pattern instruction, I would need  
18 to know what statement that good faith is going to attach to.

19 In other words, what statement somebody is saying was  
20 false but you honestly believe was true, and that's what I'm  
21 not seeing in this case.

22 So as I sit here right now, I don't see a basis for a  
23 good faith instruction, because I fear that it will be  
24 interpreted by the jury as some kind of freestanding if you  
25 find this is somebody who is acting with a good heart writ

1 large, that means you can't convict.

2 And, again, this isn't the facts of this case, but if the  
3 facts showed that, in the interest of Cincinnati and with the  
4 hope to make the city better, Mr. Sittenfeld entered an  
5 expressed agreement or even a tacit agreement to exchange a  
6 specific official act for campaign contributions, the fact  
7 that he did so out of the belief that it would ultimately be  
8 good for the city isn't a defense to the charges. And so we  
9 need to keep those apart.

10 And so that's where I'm, sort of, at on the good faith  
11 question, just so you know.

12 MR. C. MATTHEW RITTGERS: Thank you, Your Honor.

13 THE COURT: And I'm sorry, Mr. Singer, do you have  
14 any questions about that, or Ms. Glatfelter?

15 MS. GLATFELTER: Yes. I had one question about a  
16 previous statement you made about the expert issue.

17 THE COURT: Sure.

18 MS. GLATFELTER: And so as I understood it, you had  
19 asked the government and defense counsel to work together on  
20 whether there was a preliminary instruction that could be  
21 given to --

22 THE COURT: Avoid Mr. Burns testifying.

23 MS. GLATFELTER: And so, in addition to, I guess,  
24 they'll be coming back within 24 hours to tell us whether  
25 we're going to have a *Daubert* hearing or not --

1 THE COURT: Right.

2 MS. GLATFELTER: -- and at the same time, we'll be  
3 working on --

4 THE COURT: Yes. Thank you for bringing that up,  
5 because I left Mr. Fitzgerald out.

6 With regard to Mr. Fitzgerald, I've got some -- what I  
7 would want to know in a *Daubert* hearing or voir dire about  
8 Mr. Fitzgerald is if he's going to be commenting on  
9 investigative techniques, how somebody who, as far as I can  
10 tell, you know, had a cup of coffee with the FBI 30 years ago  
11 is going to be an expert on investigative techniques that the  
12 FBI should use in campaign investigations, I'm struggling a  
13 little bit, so...

14 MR. C. MATTHEW RITTGERS: Understood, Your Honor. I  
15 mean, he was a special case agent for undercover operations,  
16 and it was not -- the intent is not going to be to have  
17 Mr. Fitzgerald indicate what procedures that might be relevant  
18 to this particular sting operation, but more just a general  
19 characters and education in terms of the control, scripted  
20 calls, that would be the intent, Your Honor.

21 THE COURT: Yeah. I would need somebody to tie up  
22 his experience from 30 years ago with it being relevant to  
23 today.

24 And then, B, I would need somebody who could -- he would  
25 have to explain to me how he can tie it to the specific

1 investigation that occurred here. And I think he's going to  
2 struggle to do that, to be honest, but that's what I would  
3 want to hear about at a hearing with regard to him.

4 And with regard to these other topics, some of it -- you  
5 know, I mean, I think he wanted to talk about -- I don't have  
6 the motion, I don't think, in front of me right now, but it  
7 was like how people interface with potential donors and  
8 campaigns generally, or something like that.

9 Again, that runs directly into the problem that I've  
10 raised already about, even if Mr. Sittenfeld was acting in a  
11 manner consistent with the evolved custom of how candidates  
12 interface with donors, that doesn't, in my mind, impact the  
13 legality or illegality thereof.

14 In other words, even if 95 percent of the candidates are  
15 doing it, that doesn't make 95 percent of candidates are  
16 violating the law. I mean, we just don't know, you know.

17 MR. C. MATTHEW RITTGERS: I agree, Your Honor. I  
18 think it depends on how the government elicits testimony and  
19 evidence in the case.

20 We anticipate that one of the themes that the government  
21 will argue, probably expressly, is that Mr. Sittenfeld should  
22 have known or did know that these undercovers were corrupt,  
23 that these actors were corrupt, by pointing to examples in the  
24 audio and video indicating, well -- they never stated they're  
25 corrupt, but there are times when they say, well, yeah, he's

1 legitimized himself now. UC3 worked in New Jersey, but he's  
2 legitimized himself now.

3 And there will be evidence presented to where they offer  
4 Mr. Sittenfeld money orders, which he declined. There will be  
5 evidence presented where they offered Mr. Sittenfeld corporate  
6 checks, as opposed to LLC checks.

7 I believe that the relevance, the proposed relevance for  
8 that testimony would be that that must be an indication to  
9 Mr. Sittenfeld that these people are, therefore, corrupt.

10 And it would go to his -- I'm playing the government. So  
11 therefore, we wanted somebody, Mr. Fitzgerald or somebody  
12 other than Mr. Sittenfeld himself, to say people on the  
13 campaign trail offer cash. I've frequently had to tell donors  
14 what is legal and permitted and send checks back.

15 And it's not what the government is hoping the jury will  
16 infer from these atmospherics, it is something that happens  
17 every day, which is why Mr. Sittenfeld looked optimistically  
18 on all of this and did not say, whoa, are you corrupt? I'm  
19 not going to deal with you anymore.

20 THE COURT: I see. And to the extent someone's been  
21 involved in campaign finance for an extended period of time, I  
22 would imagine that they may have some insights into how often  
23 things like we got a check that we have to send back, which  
24 happens in political campaigns all the time.

25 People get checks and realize, for whatever reason, they

1 can't accept it. It's, as you said, from a corporation,  
2 maybe, or whatever, or it can't be directed to this, or it's  
3 in excess of the campaign contribution limits or, oh, you  
4 forgot you gave this other check, we have to refund part of  
5 this.

6 You know, I understand that. And I think, if there's  
7 going to be an attempt to argue that there's something  
8 untoward about things like sending back those corporate  
9 checks, yeah, I would think that that would open the door for  
10 you putting on somebody who could explain that's a pretty  
11 common occurrence in political campaigns.

12 MR. C. MATTHEW RITTGERS: Thank you, Your Honor.

13 THE COURT: So now let's get on to the mundane parts,  
14 now that I've pontificated about the law for an extended  
15 period of time.

16 So let's talk about the length of the trial. It's  
17 currently set for four weeks, June 21 to July 15. You've  
18 heard from the Court today a little bit about my intent,  
19 probably, my intent to exclude at least some of the evidence  
20 that we've heard about the parties intending to put on, but --  
21 and so I don't know if you can take that into account yet.

22 I understand there may be some streamlining, if we can  
23 present some things to the jury through instructions from the  
24 Court, and things of that nature.

25 But what's the current estimate, from the government, as



1 to how long it believes its case in chief will last?

2 MR. SINGER: Your Honor, I think the government's  
3 position is we think our case will be done in about a week.

4 THE COURT: Okay.

5 MR. SINGER: Give or take.

6 THE COURT: Mr. Rittgers, do you have any sense of  
7 your case?

8 MR. C. MATTHEW RITTGERS: It won't be longer than a  
9 week, Your Honor.

10 MR. C. HENRY RITTGERS: But what if it is, Judge?  
11 What if it's ten days instead of five days?

12 THE COURT: Well, I'm here every day, and the jury  
13 will be here every day, so...

14 MR. C. HENRY RITTGERS: Okay. We just don't want  
15 to --

16 THE COURT: No, no. I might as well talk about this  
17 now. We have pre-qualified the jury, not with respect to any  
18 issue. I took what the parties said about, you know,  
19 potential downsize, of trying to pre-screen for people who  
20 have had exposure to this case. But we are pre-qualifying  
21 that they are all people who could be here four weeks starting  
22 June 21st.

23 So I don't believe, given what the parties have just  
24 said, that there should be a problem with the jury, or losing  
25 jurors after two weeks. We're not going to do that.

1           So everybody who comes for the voir dire will have been  
2 pre-qualified as somebody who can be in a four-week jury trial  
3 starting on June 21st.

4           Does that respond to your concern, Mr. Rittgers?

5           MR. C. HENRY RITTGERS: It was just committing to the  
6 Court that if we're only going to take five days, and then  
7 find out, after the government presents its case, we may need  
8 seven.

9           THE COURT: Sure. I'm not running a stopwatch, or a  
10 sundial, or any kind of timer, so...

11          MR. C. MATTHEW RITTGERS: And, Your Honor, just for  
12 the Court, best guess, I think that we would be three days or  
13 four days, Your Honor. That's a guess.

14          THE COURT: Okay. So four weeks may be wildly over  
15 estimated. As I said, we will have a pre-qualified jury in  
16 that regard, so I don't anticipate a problem.

17          And I'm not holding anyone -- these are estimates. I'm  
18 just trying to, sort of, get a sense.

19          Currently, we're set to start on June 21st, and that will  
20 be voir dire. I anticipate, given the size of the pool, I've  
21 asked to have 85 people brought in who are pre-qualified on  
22 time but are not pre-qualified on previous exposure to this  
23 case.

24          So there's some potential we'll lose people. There has  
25 been some media interest in this case, so I can imagine we

1 would lose some potential jurors through exposure, or things  
2 of that nature.

3 That's more than I would typically bring in, but do the  
4 parties think that's enough, 85?

5 MR. C. MATTHEW RITTGERS: I do, Your Honor. The  
6 defense does.

7 MR. SINGER: Yes, Your Honor.

8 COURTROOM DEPUTY: Your Honor, I believe she's  
9 calling in 80.

10 THE COURT: I'm sorry, 80, not 85.

11 MR. C. HENRY RITTGERS: Then we're not.

12 THE COURT: Now we got a problem, Mr. Rittgers says.

13 So the first days, I anticipate we will start voir dire  
14 at 9:30. I would like the attorneys to arrive at 9:00. The  
15 trial is scheduled for each subsequent day may vary, depending  
16 on the Court's schedule but, generally speaking, my experience  
17 with juries over the last year is they like to get going, and  
18 they like to stay and get testimony done.

19 They prefer to have days taken off the end rather than  
20 shorter days while they're going, so we're going to try and  
21 accommodate that.

22 I would imagine we'll probably start around 9:00 or 9:15  
23 most mornings.

24 Whatever time we're starting, I'd like the attorneys in  
25 the courtroom 20 minutes before we start. And I will be in

1 before we're going to bring the jury in, and I will ask both  
2 sides if there's anything they want to put on the record, or  
3 anything we need to discuss. So please be there at least  
4 20 minutes before trial is scheduled to start.

5 Generally speaking, we take one break in the morning  
6 about halfway through, one break in the afternoon. I try to  
7 wrap up around 5:00, so what I tell people is about 4:30,  
8 start thinking about is this a witness I can get done if we  
9 stay until 5:15, maybe we will.

10 If it's a witness that's going to take until 6:00, where  
11 would be a good breaking point for this witness. Or if it's  
12 4:30, and you just got done with somebody, might this be a  
13 good time to break. And if you would just want to suggest,  
14 you know, Your Honor, this would be a good time to break for  
15 the day.

16 Any time after 4:30, if you hit a spot where you feel  
17 like this would be a good breaking point, feel free because,  
18 you know, it doesn't make much sense to do another 15 minutes,  
19 and then have to essentially repeat it the next day because  
20 people have forgotten it overnight.

21 Usually, there's about an hour lunch break. And I've got  
22 a number of things that are scheduled for the lunch breaks, so  
23 some of the lunch breaks may end up being more like an hour  
24 and 15 or so, just because with a trial this long, you know,  
25 there are a number of things that have to be taken care of in

1 other cases.

2 Have the parties done their witness list exchange yet? I  
3 think they're due on the 10th; is that right?

4 MR. SINGER: Your Honor, the witnesses are due to the  
5 Court on the 10th.

6 THE COURT: Due to the Court, obviously, right.  
7 Submitted, I should say. You're giving them to the Court on  
8 the 10th, right?

9 MR. C. HENRY RITTGERS: Ex parte.

10 THE COURT: Ex parte, you're right. Yes. Are we  
11 doing separation of witnesses?

12 MR. C. HENRY RITTGERS: Yes.

13 MR. SINGER: Your Honor, just to be clear, except for  
14 the case agent who will be sitting at counsel table.

15 THE COURT: You can have one representative at trial,  
16 yes, and that's the case agent.

17 MR. SINGER: Thank you.

18 THE COURT: What's the case agent's name?

19 MR. SINGER: Special Agent Nathan Holbrook.

20 THE COURT: Has the defense made any decision that  
21 they want to share on whether or not Mr. Sittenfeld is  
22 expected to testify at trial?

23 MR. C. MATTHEW RITTGERS: We could share ex parte,  
24 Your Honor, is that okay?

25 THE COURT: Yes.

1           MR. C. MATTHEW RITTGERS: What form would you like  
2 that in, under seal, or just an email to Mr. Lang?

3           THE COURT: Do you want to just come up and do it at  
4 sidebar?

5           MR. C. MATTHEW RITTGERS: Sure.

6           (This portion of the record was placed under seal by  
7 order of the Court and filed separately.)

8           THE COURT: In terms of exhibits, are there any  
9 issues that we know of relating to admissibility of exhibits  
10 or testimony beyond those that have already been briefed?

11          MR. SINGER: No issues with exhibits, Your Honor. We  
12 just want to raise, there's been some discussions about  
13 motions, we will be filing additional motions.

14          THE COURT: Okay. Great.

15          MR. C. MATTHEW RITTGERS: Your Honor, I have a  
16 question about exhibits.

17          THE COURT: Yes.

18          MR. C. MATTHEW RITTGERS: When -- if there is -- I  
19 think I know the answer, but I just wanted to make sure that  
20 I'm aware of the Court's preference.

21          If -- we don't know, obviously, how the government is  
22 going to present its case, and so if there are exhibits that  
23 we might use to refresh or to impeach on cross, I don't want  
24 to overburden everybody with bind ers that might not be  
25 necessary. So we have probably 20 times the material that I

1 think would be necessary for cross-examining a particular  
2 witness.

3 If it's impeachment or refreshing recollection, it's  
4 difficult for us to anticipate without giving the Court  
5 literally 2,000 more exhibits.

6 Is that something that would be a problem, if we hear  
7 testimony from a witness, pull on our computer an impeachment  
8 document or a refreshment document that's not on the exhibit  
9 list?

10 THE COURT: Mr. Singer?

11 MR. SINGER: I'm thinking it needs to be on the  
12 exhibit list, probably printed out so that they can be  
13 presented to the witness in hard copy forms rather than  
14 bringing up a laptop.

15 THE COURT: Yeah. How are you planning on using it  
16 to refresh recollection, Mr. Rittgers?

17 MR. C. MATTHEW RITTGERS: Yeah. That's a good point.  
18 If it's to reflect recollection, on the technology in Judge  
19 Black's courtroom, is there a way for just the witness to see  
20 that particular document, no one else, other than the Court?

21 THE COURT: Yes, there is, although not if it  
22 involves audio, we found.

23 COURTROOM DEPUTY: Correct.

24 THE COURT: If it's just written, yes. It could be  
25 shown to counsel, the Court, and the witness.

1 MR. C. MATTHEW RITTGERS: I believe that there are --  
2 right now we are including in our exhibit list documents that  
3 we've received in discovery from the government, and it is  
4 around 2,000 listed documents in Excel sheets. And some  
5 documents, for example, might be the five- or six-hundred page  
6 document that's now in your chambers, Your Honor, on J.K. So  
7 these are not one-page documents.

8 I want to try to make the trial as efficient as possible  
9 and effective as possible, so the timing and clarity, it might  
10 be easier -- I don't know what a witness might say that the  
11 government presents.

12 This is not for our witness on direct. This is only for  
13 cross-examination of their witnesses, if it would be  
14 potentially easier or more efficient for us to say, okay,  
15 instead of providing the Court in advance with  
16 300 potential documents for J.K., as an example, if he  
17 testifies to a very narrow scope, we might only need one.

18 THE COURT: Yes.

19 MR. C. MATTHEW RITTGERS: So I don't know what the  
20 Court would prefer in terms of having everything dropped off  
21 here in advance.

22 THE COURT: Generally speaking, the Court does not  
23 prefer having a truckload of documents that may or may not end  
24 up being used at trial.

25 MR. C. MATTHEW RITTGERS: Okay.



1           MR. C. HENRY RITTGERS: Your Honor, is there an  
2 exchange of exhibits prior to trial, or is that ex parte?

3           THE COURT: I thought it was an exchange but,  
4 Mr. Singer, is that not right?

5           MR. SINGER: It's our understanding it's ex parte,  
6 Your Honor.

7           THE COURT: Okay.

8           MR. C. HENRY RITTGERS: And if I may, Judge?

9           THE COURT: Yes.

10          MR. C. HENRY RITTGERS: As to materials that are used  
11 for cross-examination, we will probably show those at the time  
12 we're cross-examining the particular witness, not ahead of  
13 time?

14          THE COURT: Right. That's what I would anticipate  
15 usually the way cross-examination works.

16          Since you've raised refreshing recollection, I'll just  
17 share one pet peeve so we can all avoid that.

18          Refreshing recollection does not consist of handing the  
19 witness a document, and then asking the witness to read the  
20 document into the record, so that's not refreshing  
21 recollection.

22          Refreshing your recollection is you hand the witness a  
23 document, the witness reads the document, you say does that  
24 refresh your recollection, and then the witness testifies  
25 without the document, based on his or her now refreshed

1 recollection.

2 For some reason, I've seen people do the, okay, well,  
3 doesn't the document say X? That isn't refreshed  
4 recollection. That's trying to read the document into the  
5 record, so I'd prefer to avoid that.

6 All right. How long do you anticipate the opening  
7 statement is going to be for the government?

8 MR. SINGER: Roughly 45 minutes, Your Honor.

9 THE COURT: Okay. Does the defense intend to give  
10 their opening statement at the outset, or are they going to  
11 wait until their case in chief?

12 MR. C. MATTHEW RITTGERS: At the outset, Your Honor.

13 THE COURT: How long do you anticipate yours is going  
14 to go?

15 MR. C. MATTHEW RITTGERS: Sixty minutes.

16 THE COURT: Are you going to be using, Mr. Singer,  
17 audiovisual equipment?

18 MR. SINGER: We may, Your Honor. We have not decided  
19 yet.

20 THE COURT: What about you, Mr. Rittgers?

21 MR. C. MATTHEW RITTGERS: Yes, we intend to,  
22 Your Honor.

23 THE COURT: I'll have you talk with Scott. I think  
24 somebody's got a time to set up to go look at the  
25 audiovisuals, I believe.

1           COURTROOM DEPUTY: Yes. We're going to after the  
2 hearing, Judge.

3           THE COURT: Be sure you're comfortable with how it's  
4 going to work.

5           MR. SINGER: Your Honor, we would also like an  
6 opportunity to run through our audiovisuals. Should we  
7 coordinate with Scott?

8           COURTROOM DEPUTY: Yes.

9           MR. SINGER: Coordinate with Scott. Great. Thank  
10 you.

11           MS. GLATFELTER: Your Honor, on the topic of opening  
12 statements, we had asked in our trial brief for the parties to  
13 exchange, at least in advance, if they're going to use  
14 exhibits or audio clips, that those be exchanged so that we  
15 can raise any objections beforehand, not in front of the jury.

16           THE COURT: Yeah. I think that's a very good idea in  
17 this case, since there seems to be some remaining  
18 disagreements about the scope of things. Please do exchange  
19 any exhibits that you intend to use if you -- in your  
20 openings.

21           To the extent -- I guess what I'd say, Mr. Rittgers, is  
22 don't over promise on things, like you're going to hear from  
23 an expert that says X, Y, Z if we haven't done a *Daubert*  
24 hearing.

25           I just don't want you in a position where you can't

1 deliver, through no fault of your own, but through my fault  
2 because I rule on legal issues, so word to the wise.

3 MR. C. MATTHEW RITTGERS: Your Honor, on the audio  
4 clips and exhibits for opening, sometimes during trial, I'll  
5 have an exhaustive potential clips, or like a PowerPoint where  
6 I can lead things, depending upon the government's opening.

7 So could I just have three or four days after they show  
8 me what they plan to produce so that I can then coordinate and  
9 tell them without overproducing?

10 THE COURT: I think that seems fair to me.  
11 Ms. Glatfelter, any objection to that?

12 MS. GLATFELTER: We typically exchange them like the  
13 day or two before a trial. I mean, I think it's strange for  
14 me to give that a week in advance, and then receive theirs,  
15 you know, the day before or something. I would --

16 THE COURT: I understand.

17 MS. GLATFELTER: -- a simultaneous exchange seems --

18 THE COURT: Well, I take Mr. Rittgers' point that  
19 he's responding to your opening.

20 MS. GLATFELTER: Sure. And if he has additional  
21 ones, or something like that, we can --

22 THE COURT: I'll tell you what. Why don't you  
23 produce yours at least three days before trial, Mr. Rittgers,  
24 you produce yours. I think you should have a pretty good  
25 sense of where the government 's going to go through opening,

1 so 24 hours to kind of figure out what you're going to do, all  
2 right?

3 And I know we've discussed some potential stipulations.  
4 I don't know if they're actually stipulations, but talk about  
5 some preliminary instructions.

6 Let me ask, are there going to be any stipulations in  
7 this case, Mr. Singer?

8 MR. SINGER: Yes, there are, Your Honor. The parties  
9 need to get going on negotiations, as far as that goes. The  
10 government will take the blame as far as moving forward, but  
11 there is one stipulation we have come to, the authenticity of  
12 evidence that has been produced.

13 THE COURT: I think I saw that.

14 MR. SINGER: But otherwise, we would be negotiating  
15 and, hopefully, we'll get those to you in advance of trial.

16 THE COURT: "Hopefully, we'll get those to you"?

17 MR. SINGER: No. We will definitely get them to you  
18 in advance of trial, sufficiently in advance of trial, where  
19 if you're able to raise any concerns, although I don't think  
20 you will.

21 THE COURT: All right. Mr. Rittgers, your thoughts?

22 MR. C. MATTHEW RITTGERS: Your Honor, we did send  
23 over a number of stipulations, fairly rough stipulations, but  
24 a number of them. A lot of them would be very similar to the  
25 requested preliminary jury instructions regarding the -- a

1 while ago.

2 Again, I know Mr. Singer's took credit for not -- there's  
3 no negotiation, but a lot of it has to do with that, so we are  
4 waiting to hear.

5 THE COURT: Okay.

6 MR. C. HENRY RITTGERS: Judge?

7 THE COURT: Yes. Go ahead, Mr. Rittgers.

8 MR. C. HENRY RITTGERS: Maybe if we could have a date  
9 certain by the time for which we all agree as to what the  
10 stipulations would be would be great, maybe a week before  
11 trial or something?

12 THE COURT: Yeah, that would be the 14th, I think.  
13 Why don't we say June 14th submit stipulations. I think  
14 that's a good idea.

15 MR. C. HENRY RITTGERS: Thank you, Your Honor.

16 THE COURT: In terms of the stipulations themselves,  
17 each stipulation should be a separate pleading. You know, we  
18 stipulate the following, and then we have one fact, and each  
19 one's a separate one.

20 The reason I want to do them separately is because,  
21 during trial, to the extent there's a stipulation, somebody's  
22 going to need to remind me to read it to the jury at the  
23 appropriate time, so if you'd say, oh, we'd like the  
24 stipulation read. You can also make use of the stipulation  
25 during closings, and so it's just a matter if each one is on a

1 separate piece of paper.

2 If you, at the end, want to amalgamate some for a  
3 demonstrative part of your closing, that's fine. With  
4 stipulated evidence, I don't have a problem with that, but we  
5 need the granularity up front.

6 *Jencks* material, it sounds like, has largely been  
7 produced, but there's some limited amount that's still  
8 outstanding. Is that right, Mr. Singer?

9 MR. SINGER: That is correct, Your Honor.

10 THE COURT: And you're producing that on a regular  
11 basis as it comes in?

12 MR. SINGER: Yes.

13 THE COURT: Mr. Rittgers, any comment on that?

14 MR. C. MATTHEW RITTGERS: No, Your Honor.

15 THE COURT: I assume there's no more remaining *Brady*  
16 issues, Mr. Singer?

17 MR. SINGER: Not from the government's perspective,  
18 Your Honor. If I may, Your Honor?

19 THE COURT: You may.

20 MR. SINGER: We do have the *ex parte* that we will be  
21 submitting. It's narrower in scope than potentially we had  
22 initially thought, but we will be submitting that to the Court  
23 within the next day or so.

24 THE COURT: Okay. Mr. Rittgers?

25 MR. C. HENRY RITTGERS: Judge, what was Mr. Singer

1 saying, he's going to file an ex parte communication to the  
2 Court?

3 THE COURT: Yeah, for --

4 MR. C. HENRY RITTGERS: I know it's accepted in  
5 federal court, but aren't they going to give us a basis as to  
6 why it's ex parte?

7 THE COURT: I think that was the motion they filed  
8 that I ruled on that said that they could submit something  
9 ex parte. Am I wrong, Mr. Singer?

10 MR. SINGER: No. That's correct, Your Honor.

11 THE COURT: So I ruled on that, and said if the  
12 government has a -- if the government, in good faith, can't  
13 make a determination as to whether or not something  
14 constitutes *Brady*, that they can submit it to the Court for  
15 determination.

16 MR. C. HENRY RITTGERS: Oh, we're just talking about  
17 ex parte communication about *Brady*?

18 THE COURT: Yes.

19 MR. C. HENRY RITTGERS: I apologize. I  
20 misunderstood.

21 THE COURT: No. We're not generally going to do  
22 ex parte communications in the case.

23 MR. C. HENRY RITTGERS: That's good to know.

24 THE COURT: Yeah. In terms of jury instructions,  
25 I've received both parties' jury instructions and proposed



1 verdict forms.

2 In terms of the supplemental jury instructions, remind me  
3 what were the two topics of those?

4 MR. C. MATTHEW RITTGERS: It was in good faith, Your  
5 Honor. The expert testimony, I believe, was --

6 THE COURT: Okay. Then the question was whether  
7 there was going to be an expert witness. Okay. All right.

8 I know it's a difficult case on the jury instructions  
9 because the parties have two, like, vastly different  
10 structures of jury instructions, so I don't know -- often you  
11 can kind of marry the jury instructions, but the problem here  
12 is that the parties -- one side, I think it's the  
13 government's, essentially has an eight-page jury instruction  
14 that covers all of the Hobbs Act; and, you know, the other  
15 side, I think, breaks it down more issue by issue.

16 I've gone through the jury instructions and the  
17 objections, and I can tell you sort of where I am on the  
18 objections.

19 But you get to two different spots. If you start with  
20 the defendant's jury instructions and then rule on the  
21 government's objections, you end up at spot A.

22 If you start with the government's jury instructions and  
23 rule on the defendant's objections, you end up at point B.  
24 And there's a fair amount of substantive overlap, but there's  
25 still some differences with regard to it just because of the

1 way the difference in the form, the way the parties submitted  
2 it, and the granularity. And I think there's a lot more  
3 granularity in the defendant jury instructions.

4 By granularity, I just mean a lot more separate jury  
5 instructions that were more combined on the government's side.  
6 So I'm struggling a little bit of how to bring some sanity to  
7 that process.

8 Any thoughts, Mr. Singer or Mr. Rittgers or  
9 Ms. Glatfelter?

10 MS. GLATFELTER: Sure. We grouped them together -- I  
11 can speak for the government's jury instructions. We grouped  
12 them together because that's how the Sixth Circuit proposed  
13 for the Hobbs Act, and so the other instructions followed that  
14 model.

15 But I've seen them done both ways, in terms of, you know,  
16 breaking the elements down. If the Court wished, I think we  
17 could do that with each of the instructions.

18 We went with the Sixth Circuit pattern since those were  
19 the ones available and followed that model, so...

20 THE COURT: Okay. Mr. Rittgers, your thoughts?

21 MR. C. MATTHEW RITTGERS: Unfortunately, Your Honor,  
22 I don't have much to add.

23 THE COURT: All right. Well, typically, the way I  
24 would do jury instructions is -- because jury instructions may  
25 depend, to some extent, on the evidence that's solicited at

1 trial, or, for example, whether or not experts are called at  
2 trial.

3 Typically, what I would do is, as we get close to the  
4 end, I would hold a charging conference after trial one day in  
5 advance of closing, and kind of go through it with the parties  
6 and come up with the final jury instructions so that the  
7 parties have the jury instructions in advance of closing.

8 But we've waited, sort of, as late as we can during the  
9 trial to make sure that the jury instructions match up with  
10 the evidence that's actually been presented.

11 So do you think that's going to work here,  
12 Ms. Glatfelter? I guess you're the jury instruction person.

13 MS. GLATFELTER: I do, Your Honor. I think, maybe  
14 what the Court is struggling a bit with, and we had this in  
15 the fall, is that there are some parts in the instruction,  
16 such as official act, which is repeated throughout.

17 I think, from an organizational standpoint, we just have  
18 to make a decision whether you want to repeat it three times,  
19 or whether it goes in the first one and you refer back, but  
20 once the Court makes that decision, I think we all can follow.

21 I would say, rather than after trial one day, maybe we  
22 would adjourn earlier, and we could prepare in advance that  
23 this is going to be the charging conference day.

24 I think this one will probably take a little bit longer  
25 than the typical charging conference, just because of the

1 amount of issues and the fact of some of the objections that  
2 need to be resolved.

3 THE COURT: Yeah. And given what the parties have  
4 said about anticipated duration, I think, if we have a  
5 pre-qualified four-week jury, there should not be a problem  
6 taking a day off at some point to do a charging conference, or  
7 at least a half day off, so that makes a lot of sense.

8 Mr. Rittgers, is that acceptable to the defense?

9 MR. C. MATTHEW RITTGERS: Yes, Your Honor.

10 THE COURT: So there are some interesting jury  
11 instruction issues. Like I said, I've gone through the  
12 objections, and I largely know where I'm at on the various  
13 objections.

14 I don't think it will take all that long once we figure  
15 out, you know, just sort of whether we're going to break them  
16 up into separate instructions, or whether we're going to give  
17 them more as a group. So that's kind of the biggest issue in  
18 my mind at this point.

19 I think I've got everybody's objections on the jury  
20 instructions, right? We're all done with that? Good.

21 Any security considerations in this trial? I'm not  
22 anticipating any, but...

23 MR. C. HENRY RITTGERS: This may be more  
24 housekeeping. I would like to keep our stuff, so we're not  
25 hauling boxes or whatever we're going to have, at least I'm

1 old school, I have paper.

2 Is there a place where I can keep my stuff at night and  
3 not worry about somebody tampering with it?

4 COURTROOM DEPUTY: It can be kept in the courtroom.

5 THE COURT: I think the courtroom's locked overnight.

6 MR. C. HENRY RITTGERS: Excellent. Thank you.

7 THE COURT: I assume that that's the technical legal  
8 term, "stuff." Mr. Singer?

9 MR. SINGER: One moment, Your Honor?

10 THE COURT: Sure.

11 MR. SINGER: Your Honor, may the parties approach  
12 sidebar to discuss?

13 (This portion of the record was placed under seal by  
14 order of the Court and filed separately.)

15 THE COURT: We had a discussion off the record of  
16 various security considerations, and we've got an agreement on  
17 how we're going to handle issues that we've discussed.

18 Moving to the next item. Will this case garner media  
19 attention? I assume the answer is yes.

20 And are there any specific arrangements that need to be  
21 made with regard to that, in anyone's view, other than what we  
22 have already discussed already?

23 MR. C. MATTHEW RITTGERS: Nothing from the defense,  
24 Your Honor.

25 MR. SINGER: No, Your Honor.

1           THE COURT: Very good. Anybody anticipate any  
2 special hearings outside the presence of the jury, other than  
3 with regard to, potentially, this expert issue and voir dire,  
4 expert voir dire?

5           MR. SINGER: Not that I can think of right now,  
6 Your Honor.

7           MR. C. MATTHEW RITTGERS: We agree.

8           THE COURT: Juror questionnaires. Let's talk a  
9 little bit about the jury process. The jury questionnaires  
10 are usually available one week prior to trial.

11          Regarding voir dire, who is going to conduct it for the  
12 government?

13          MR. SINGER: I am, Your Honor.

14          THE COURT: Who is going to conduct it for the  
15 defendant?

16          MR. C. MATTHEW RITTGERS: I am, Your Honor.

17          THE COURT: If I write Mr. Rittgers, that will be  
18 helpful.

19          MR. C. MATTHEW RITTGERS: Matthew.

20          THE COURT: If there are any sensitive questions that  
21 you would like the Court to propose to the panel so that you  
22 don't need to, just let me know one week prior to trial what  
23 those topics would be. I will add them to my voir dire.

24          The way I've been doing voir dire is we bring everybody  
25 in. We have a number of them seated in the box, and then the

1 rest of them seated in the courtroom.

2 And I ask a relatively extensive set of questions that's  
3 designed to elicit whether anybody has close family members  
4 who are members of law enforcement, for example. Or I suppose  
5 in this case, you know, has anybody in here run for office, or  
6 raised money for candidates, or things that one would  
7 anticipate might be an issue in the case, and where you might  
8 want to elicit whether someone has prior knowledge with regard  
9 to those things.

10 It's a relatively extensive, as I said, voir dire that I  
11 try to tailor to the issues that I see in a given case.

12 After I have completed my voir dire, I allow each of the  
13 parties to conduct voir dire. And, generally speaking, what I  
14 would like the parties to do is conduct the voir dire from the  
15 lectern. So we'll set the lectern up to face the panel, and  
16 you can talk to everybody.

17 I don't like if people ask specific jurors questions just  
18 from out of the blue, like, hey, Juror 35, let's talk to you  
19 for a moment.

20 Let's pose the questions to the entire venire, and then  
21 if somebody raises their hand, if you want to follow up to get  
22 more information from that person, absolutely that's  
23 permissible.

24 But the other thing that I would say is, if there's an  
25 answer or an omission on the juror questionnaire that you need

1 to follow up on that and for some reason I haven't, there's  
2 something you saw on a jury questionnaire and you want to  
3 follow up with that juror, that's fine.

4 But what I don't like is if counsel start trying their  
5 case through voir dire. If I could present evidence that this  
6 and this and this, could you convict? We're not going to do  
7 that. We're not going to do our closing as part of voir dire.

8 And I'm looking at everybody equally on that. We're not  
9 going to presell our theories of the case. We're not going to  
10 do any of that stuff.

11 This is supposed to be a relatively streamlined procedure  
12 that's designed to allow us to seat a jury that's unbiased  
13 with regard to the facts that they're going to hear in this  
14 case.

15 I really want the parties to take that to heart and not  
16 give a closing statement with a bunch of question marks in it  
17 and then call it voir dire, okay?

18 After both sides have completed their voir dire, we'll  
19 release the jury. At that point, we'll do the jury selection  
20 process.

21 We'll do for cause first, obviously, and go through, and  
22 then we're going to do peremptories. I'm thinking six for the  
23 government, ten for the defendant on peremptories. They will  
24 be exercised as follows.

25 United States will exercise its first, the defendant will



1 do its first and second; the United States will then exercise  
2 its second, the defendant will exercise its third and fourth;  
3 the United States will then exercise their third, the  
4 defendant will do fifth and sixth; then the United States  
5 fourth, and defendant will do seventh and eighth; then the  
6 United States fifth, the defendant ninth; then the United  
7 States sixth, and the defendant tenth.

8 And basically, I've had people ask, do we have to strike  
9 people that are already in the box? The way we're going to do  
10 this is it's going to be the 12 lowest number of jurors that  
11 remain after the strikes will be the jury in the case.

12 So you can strike Juror Number 81, for all I care.  
13 That's probably not going to change the jury if you strike  
14 Juror Number 81, but I don't care. You don't have to strike  
15 the juror that's in the box. You can use peremptories on any  
16 juror you see fit.

17 Now the next topic I want to discuss is the number of  
18 alternate jurors. Typically, I would do two. This is going  
19 to be a four-week trial, I was contemplating the possibility  
20 of adding one or two alternate jurors. I'm now hearing that  
21 this may be more like a two-week trial, so I don't know that  
22 we need four alternate jurors.

23 The countervail intention in my mind is that, on the one  
24 hand, you're asking people to donate a lot of their time, only  
25 to tell them right when it gets to the part where they're

1 supposed to start deliberating that, instead, they're excused  
2 to go home. So that's a little bit offputting, I can imagine,  
3 to people who have invested three to four weeks of their time.

4 Conversely, as everybody knows, I think there has been at  
5 least a mild uptick in COVID numbers. You know, there's  
6 always the possibility we may lose one or more jurors during  
7 the course of the trial.

8 I forget. I think if we get down to, what is it, ten,  
9 we're still okay? Where is the Sixth Circuit at? I don't  
10 know that we need to -- I thought 11. Is it 10 or 11? I  
11 think there's some case law that allows you in some unique  
12 circumstances if people fall off the panel. Am I wrong?

13 MR. SINGER: I'm not sure, Your Honor.

14 MR. C. MATTHEW RITTGERS: I don't know, Your Honor.

15 THE COURT: Okay. Well, in any event, what are  
16 people's thoughts on how many alternates we should have,  
17 Mr. Singer?

18 MR. SINGER: Your Honor, given where we are with  
19 COVID cases, three or four makes sense from the government's  
20 perspective.

21 THE COURT: Mr. Rittgers?

22 MR. C. MATTHEW RITTGERS: We agree with that, Your  
23 Honor.

24 THE COURT: Three or four, which one?

25 MR. SINGER: Let's go with four, Your Honor.

1 MR. C. MATTHEW RITTGERS: We agree.

2 THE COURT: So we'll do four alternates. I think we  
3 usually do one strike?

4 COURTROOM DEPUTY: One for every two.

5 THE COURT: One for every two?

6 COURTROOM DEPUTY: Yes.

7 THE COURT: So you will get two more strikes. Both  
8 the defense and the government will get two more strikes on  
9 peremptories after.

10 So we'll seat the first 12, and then we'll move on to  
11 alternates, and then -- yes, Mr. Rittgers, Senior?

12 MR. C. HENRY RITTGERS: I understand we're addressing  
13 the entire panel. Are they going to be seated in a certain  
14 manner so that we know who we're talking to?

15 THE COURT: Sure. I thought I mentioned this. So  
16 we'll have the first 16, 18?

17 COURTROOM DEPUTY: I believe he has 16.

18 THE COURT: So 16 in the box. So the first 16 will  
19 be seated in the box. Everybody else will be seated in the  
20 gallery, so you can set up to sort of face everybody.

21 They will be seated, obviously, in order of juror number.  
22 Hopefully, they usually do a pretty good job of getting them  
23 in order.

24 Of course, we're going to refer to everybody by their  
25 juror numbers in connection with the voir dire so, you know,

1 Juror Number 23, you raised your hand, tell me more about X or  
2 whatever.

3 And I'll try to remind them to identify themselves by  
4 juror numbers, to speak up when asked questions so we know who  
5 it is. Does that answer your question, Mr. Rittgers?

6 MR. C. HENRY RITTGERS: Yes. Maybe I'm just being  
7 too technical here, but will there be some kind of -- I assume  
8 that in Judge Black's courtroom, it's going to be similar as  
9 far as the makeup of this courtroom, correct?

10 THE COURT: Well, you should go over and look at it.  
11 I think you guys are going after. It's substantially wider  
12 than this courtroom. I think there's three sets of benches  
13 going across, or two sets of long benches.

14 COURTROOM DEPUTY: Three.

15 MR. SINGER: Three.

16 THE COURT: So there's a lot more seating width-wise.

17 MR. C. HENRY RITTGERS: So 16 in the box, and  
18 number 17 goes in the front, 18, 19, 20, is that the way it  
19 works?

20 THE COURT: Usually. Jennifer Webster's our jury  
21 coordinator. She brings them in, she tries to get them  
22 seated, and then she calls up where 17 is, and then in this  
23 row starts with this number, and then this row starts with  
24 this number. And she usually does a pretty good job, so you  
25 should know who is sitting everywhere.

1 MR. C. HENRY RITTGERS: Thank you, Your Honor.

2 THE COURT: Juror note taking preferences,  
3 Mr. Singer, Ms. Glatfelter?

4 MS. GLATFELTER: Yes. I think it is the practice in  
5 the courthouse to allow jurors to take notes if they would  
6 like to.

7 THE COURT: Mr. Rittgers?

8 MR. C. MATTHEW RITTGERS: Your Honor, our personal  
9 preference is probably no note taking.

10 THE COURT: Yeah. I would tell you, that was unfair  
11 to ask before I told you how I explain it.

12 The Court generally allows jurors to take notes, unless  
13 you've got some pretty good arguments as to why you think it's  
14 inappropriate in this case.

15 I do give cautionary instructions about not relying on  
16 the notes in replacement of memory, not relying on somebody  
17 else's notes over your own memory.

18 I understand there's always some risk that notes take on  
19 some kind of a more authoritative character back in the  
20 deliberation room, but I think with a two-week trial, it's a  
21 lot to ask people to remember everything without taking any  
22 notes, so I'm pretty strong in my mind to allow them to take  
23 notes.

24 I don't allow them to take their notes with them outside  
25 the courthouse. They leave them in the courtroom during the

1 day. They will have their notes back with them during  
2 deliberations, but they'll have cautionary instructions about  
3 the notes. We supply, obviously, the notepads, and we keep  
4 them at the end. I know that.

5 Well, let's talk a little bit about masks. What we've  
6 been doing is, when we have the entire panel in, the whole  
7 venire, we've been having them wear masks just because there's  
8 80 people, 85 people in the courtroom.

9 But once trial gets started, I've sort of more been  
10 leaving that up to the jurors themselves. But I'm happy to  
11 hear from the parties if they have a view on this, so  
12 Mr. Singer?

13 MR. SINGER: We would defer to the Court as far as  
14 that goes, Your Honor.

15 MR. C. MATTHEW RITTGERS: Your Honor, would the  
16 attorneys during that process be permitted to have their masks  
17 off?

18 THE COURT: Yes. I try to explain that to the venire  
19 just because they're obviously seated close together, the  
20 attorneys are -- I don't want anybody harboring ill will  
21 towards the attorneys because they're not masked when the  
22 panel is.

23 Yes, Mr. Rittgers?

24 MR. C. HENRY RITTGERS: What about the individual  
25 juror that might have a question?

1           THE COURT: Yes. So when they answer a question, I  
2 ask them to pull their mask down to make it easier for you to  
3 understand them, and even more importantly to make it easier  
4 for our court reporter to understand them.

5           If I fail to do that, you will hear her gentle, dulcet  
6 tones coming in and reminding me that it would help her if I  
7 ask the jurors to pull down their masks.

8           Any other questions on that, Mr. Rittgers?

9           MR. C. HENRY RITTGERS: No, Your Honor.

10          THE COURT: Very good. In terms of how I like to  
11 conduct a trial. For objections, please stand when you make  
12 an objection, just so I can see who is making the objection.

13          If you'd just rise and say I object, just one word. I  
14 object, hearsay. I object, relevance. If I want more, I'll  
15 ask you for more.

16          If, for some reason, you believe you need a sidebar, you  
17 can ask for a sidebar, we can go over to sidebar and handle  
18 whatever.

19          I personally think it's helpful if we try to keep  
20 sidebars to a minimum, so if it's something that you think is  
21 really crucial, let's do it. But, you know, I just recently  
22 had a jury trial that was sidebar every ten minutes, and I  
23 think it's a little broken up for the jury when we do that.  
24 So whatever counsel can do to minimize that is great.

25          I'm generally not going to hear much argument on the

1 objections. You make the objections. If, for some reason,  
2 you really feel the need to make an argument, we can do that  
3 at sidebar. Generally speaking, I will rule pretty quickly on  
4 the objections.

5 In terms of examination of witnesses, I'm assuming  
6 counsel will conduct their examination of witnesses from the  
7 lectern.

8 You can approach witnesses if you need to give them  
9 something to refresh their recollection. Before you leave the  
10 lectern and head towards the witness, if you could give me a  
11 heads up like, Your Honor, may I approach, or something like  
12 that, that would be helpful and appreciated.

13 If you want to come around the lectern, and I guess some  
14 people call it the one-arm rule, you know, stay within one arm  
15 of the lectern one way or the other. If you feel like that  
16 helps you connect with the jury or whatever, that's fine.

17 I will say the mics are pretty directional, and if the  
18 court reporter is having difficulty hearing you, that's going  
19 to create a problem for her, which in turn creates a problem  
20 for me, which will in turn create a problem for you. So try  
21 to make sure you're speaking into the mic from wherever you're  
22 at, and I think everything will go all right.

23 I am hoping that counsel will instruct their witnesses to  
24 answer questions in a courteous fashion. Evasive answers,  
25 disrespect to opposing counsel, I really like to try to keep



1       that to a minimum.

2           I'd appreciate your cooperation with regard to the  
3       witnesses that you're kind of sponsoring by putting on the  
4       stand to answer questions in an appropriate fashion.

5           And I expect counsel to extend the same courtesy to the  
6       witnesses. Importantly, counsel and the witnesses can't get  
7       into a situation where they're talking over each other.

8           So if you're having a difficulty with someone who, in  
9       your view, is not answering a question or answering too much  
10      of a question and just going on and on and on, ask for my  
11      help. I will provide it.

12          The solution for that is not to start trying to clip the  
13      witness's answers by talking over the witness while the  
14      witness is still talking. I will instruct witnesses to answer  
15      the question that's been posed to them.

16          I'm not a big believer that you get to force somebody  
17      into a yes or no by saying, well, I asked it as a yes or no  
18      question. Well, sometimes it's not a yes or no answer.  
19      That's just the way it's going to be. But if witnesses are  
20      using that as an excuse to be evasive, I will assist in  
21      preventing that.

22          There's a number of attorneys in here. I'm assuming that  
23      there's going to be one attorney who is responsible for each  
24      witness. And by responsible for witness, I mean will do the  
25      direct on that witness or the cross-exam on that witness, and

1 then will also handle objections to whoever is doing the  
2 direct or cross-examination for the other side.

3 So I don't want an attorney who is responsible for asking  
4 the question, and a different one who is responsible for  
5 objecting. If it's your witness, you can object with regard  
6 to that witness as well.

7 When you're done with a witness, if you can tell me  
8 before you just leave the lectern and walk and sit down. Just  
9 say, Your Honor, we're finished with this witness or whatever.  
10 Just let me know.

11 I'm fine if you want to leave the lectern and consult  
12 with your cocounsel or your client about whether there are  
13 more questions that should be asked. You could just say, Your  
14 Honor, could I have a minute to consult, I'm happy to give it  
15 to you.

16 It's just, generally, when people are leaving the  
17 lectern, I like to have some sense of where they're headed and  
18 why before they do it. If we follow that, I think we'll all  
19 get along famously.

20 That was sort of what I had on my list. Are there other  
21 questions that people would like to talk about today?

22 MR. SINGER: Not from the government, Your Honor.

23 MR. C. MATTHEW RITTGERS: Not from the defense,  
24 Your Honor.

25 THE COURT: Okay. Well, obviously, we've got to get

1       that order on with respect to the FBI letter, and I'll try to  
2       do that promptly. You guys have some homework in terms of  
3       getting back to me with regard to the experts.

4           Oh, there is one more matter on jury instructions. So  
5       preliminary instructions, absolutely can't wait for the  
6       charging conference on those. Let's get to what we can for an  
7       agreement with regard to preliminary instructions.

8           I just give the standard Sixth Circuit preliminary  
9       instructions, so if you guys want additional things -- and, as  
10      I said, we are going to want some clarification around this  
11      PAC stuff, either by way of preliminary instructions or by way  
12      of expert.

13          I know we haven't figured out exactly which of those  
14      we're going to do, but to the extent it's going to be  
15      preliminary instructions, we need to get those hammered out  
16      sooner rather than later.

17          With regard to what we're going to do at the close, I've  
18      done it two ways so far. So there's instructions as to the  
19      substantive law, and then there's instructions about how the  
20      jury should deliberate, right, like you should pick a  
21      foreperson, and when you deliberate, you should listen to each  
22      other and all that stuff.

23          I have, on a few occasions now, given the substantive law  
24      instructions prior to closing. So after the parties have  
25      rested but prior to closing, I'll instruct them, the jury, on

1 the law, the substantive law, so that when the parties refer  
2 to it in closing, they can say, as you've already heard from  
3 the Court, blah blah blah blah blah, and then I'll finish up  
4 with the here's how you guys get along in the jury room  
5 instructions after closing.

6 Or alternatively, I've had cases where parties strongly  
7 prefer doing the closings first, and then having all of the  
8 instructions, substantive and procedural instructions, read  
9 after the closings.

10 Of course, you've got the Court's jury instructions, so  
11 you can say you will hear from the Court that blah blah blah  
12 blah blah, and then I'll say it after.

13 I generally have felt like it's worked better if I get  
14 the substantive instructions in advance of closings, and then  
15 have closings, and then give the procedural instructions, but  
16 I don't have a strong preference if the parties would prefer  
17 to do it a different way so, Mr. Singer?

18 MR. SINGER: Your Honor, I think we have a strong  
19 preference for the former, where the jury is instructed about  
20 the law, the parties will give their closing arguments, and  
21 then the final instructions.

22 THE COURT: Okay. Mr. Rittgers?

23 MR. C. MATTHEW RITTGERS: So substantive instruction  
24 would be before the closing?

25 THE COURT: Yes. So after the defense rests, you

1 know, then I would read the substantive instructions. Say,  
2 you know, both sides have now rested. I'm going to read you  
3 some instructions about the law, then we'll hear closings from  
4 the parties.

5 And then after the government's done with their rebuttal,  
6 I would say I have just a few more instructions for you now,  
7 and then those would all be the procedural ones, like select a  
8 person to act as your foreperson, this person will speak for  
9 you in court. When you're deliberating, listen with an open  
10 mind, reminder probably about the juror note taking and all  
11 that just at the end. Does that make sense?

12 MR. C. MATTHEW RITTGERS: It does. When, if ever,  
13 would the jurors have your printed instructions?

14 THE COURT: Thank you. So the jurors will have -- so  
15 while I'm reading them, the jurors have them, because I think  
16 it's easier for people to follow if they both hear and read,  
17 and some of these are pretty complicated. So they will have a  
18 copy, each of them will have a copy while I read it to them.

19 And then in the jury room for deliberations, there will  
20 be one copy of complete instructions, both substantive and  
21 procedural. In other words, I just make a set of all the jury  
22 instructions, and I just stop reading them at a point. So  
23 I'll say now we'll hear the closings.

24 But it's just one set of jury instructions. All the  
25 jurors will have that at their seats when I'm reading them,

1 but then back in the jury room, there will be one set of the  
2 entire instructions that they can refer to during the  
3 deliberations. Does that make sense?

4 MR. C. MATTHEW RITTGERS: It does, Your Honor. May I  
5 have one moment?

6 THE COURT: Sure.

7 MR. C. MATTHEW RITTGERS: Your Honor, we would prefer  
8 the substantive instructions to be read after closing.

9 THE COURT: Okay. All right. I will take that under  
10 advisement. I'll advise you as to what I'm going to do with  
11 regard to that. Any reason why, in particular, Mr. Rittgers?

12 MR. C. MATTHEW RITTGERS: I think that having the  
13 jurors hear the substantive instructions from a court,  
14 obviously, they're an important figure who they should be  
15 listening to, they might then come to a conclusion before  
16 listening to argument because they are applying the facts of  
17 the law as you give it to them and then might not be  
18 interested in hearing argument.

19 THE COURT: Mr. Singer, any response?

20 MR. SINGER: Your Honor, the evidence is the evidence  
21 that will be presented at trial. Closing arguments are not  
22 the evidence.

23 THE COURT: Right.

24 MR. SINGER: From the government's perspective,  
25 having the instructions first will allow them to put the

1 arguments into better context.

2 THE COURT: That has been my experience. But I hear  
3 what you're saying, Mr. Rittgers. I'll take it under  
4 advisement and let you know in advance of trial which way  
5 we're going to do that.

6 Any other issues anybody wants to raise before the Court  
7 before we adjourn, Mr. Singer?

8 MR. SINGER: No, Your Honor.

9 MR. C. MATTHEW RITTGERS: No, Your Honor.

10 THE COURT: All right. Thank you. I think we're  
11 ready to adjourn now.

12 (Proceedings concluded at 12:01 p.m.)

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15 C E R T I F I C A T E

16 - - -

17 I, M. SUE LOPREATO, RMR, CRR, certify that the foregoing  
18 is a correct transcript from the record of proceedings in the  
19 above-entitled matter.

20 /s/ M. Sue Lopreato  
21 M. SUE LOPREATO, RMR, CRR  
22 Official Court Reporter

23 June 8, 2022  
24  
25